

IN THE UNITED STATES DISTRICT COURT  
STATE OF MISSOURI  
WESTERN DISTRICT

NORMAN BROWN, et al.,       )  
                                  )  
                  Plaintiffs,       )  
                                  )  
          vs.                        ) Case No. 17-CV-4082  
                                  )  
ANNE L. PRECYTHE,            )  
et al.,                         )  
                                  )  
                  Defendants.       )

DEPOSITION OF STEVEN MUELLER,  
produced, sworn and examined on the 2nd day of  
November, 2017, between the hours of eight o'clock in  
the forenoon and six o'clock in the afternoon of that  
day, at the offices of Missouri Attorney General's  
Office, Broadway State Office Building, Jefferson City,  
Missouri, before Kim D. Murphy, Certified Court  
Reporter, within and for the State of Missouri.

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17 Court Reporter:  
18 Kim D. Murphy, CCR

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1           IT IS HEREBY STIPULATED AND AGREED, by and  
2       between counsel for the Plaintiffs and counsel for the  
3       Defendants that this deposition may be taken in  
4       shorthand by Kim D. Murphy, CCR, and afterwards  
5       transcribed into typewriting; and the signature of the  
6       witness is expressly reserved.

7                           \*    \*    \*    \*    \*

8           STEVEN MUELLER,  
9       of lawful age, produced, sworn and examined on behalf  
10      of the Plaintiffs, deposes and says:

11                       DIRECT EXAMINATION

12      QUESTIONS BY MS. QUINN:

13           Q.    Good morning everyone.  We're here for the  
14      deposition of Mr. Steve Mueller in the case of Brown,  
15      et al, versus Precythe, et al.

16                   And perhaps we'll go around the table and  
17      put all our appearances on the record.

18                   I am Mae Quinn from the MacArthur Justice  
19      Center on behalf of the Plaintiffs.

20                   MS. BREIHAN:  Amy Breihan from MacArthur  
21      Justice Center.

22                   MR. CRANE:  Andrew Crane from the Attorney  
23      General's Office for the Defendants.

24                   MR. SPILLANE:  Mike Spillane for the  
25      defendants, Steve Mueller, Missouri Board of Probation

1 and Parole.

2 MS. QUINN: And before we went on the  
3 record, we had a conversation amongst counsel about  
4 confidential considerations, confidentiality  
5 considerations in this proceeding.

6 And so what we've talked about, and what  
7 the understanding is, is that this deposition, the  
8 information talked about during this deposition, and  
9 the materials shared during this deposition are to be  
10 treated as confidential and covered under a protective  
11 order, until such time as we are provided with the  
12 transcript. And then the parties shall have ten days  
13 from that time in which to designate those lines and  
14 materials attached to the transcript that they deem to  
15 be confidential or might be seeking a higher coverage  
16 of confidentiality to matters that might be seen as  
17 highly confidential.

18 But for purposes of today we recognize and  
19 will treat as confidential the materials that are  
20 shared here today.

21 Does that adequately and accurately reflect  
22 what was discussed?

23 MR. SPILLANE: I'm gonna say one thing. We  
24 try to refer to the things that we're doing today as  
25 confidential. And theoretically they might be highly



1 confidential depending on how we designate within two  
2 weeks after receiving the deposition.

3 MR. CRANE: Yes.

4 MS. QUINN: At that time, once you see the  
5 materials, I imagine --

6 MR. SPILLANE: Until that point, I think  
7 the order would define -- we would treat them as highly  
8 confidential until the designation comes out.

9 MS. QUINN: I mean, because we're getting  
10 items today that are marked -- there's no item that's  
11 been marked as highly confidential.

12 MR. SPILLANE: Exactly. There might be  
13 testimony that turns out to be highly confidential, so  
14 we'll treat it as highly confidential until it's  
15 designated or by omission two weeks after we receive  
16 the transcript.

17 MS. QUINN: By two weeks you mean ten  
18 business days?

19 MR. SPILLANE: Ten business days.

20 MS. QUINN: And with that modification we  
21 are fine with that.

22 Q. So Mr. Mueller, your full name is, is it  
23 Steven Mueller?

24 A. Steven Mueller.

25 Q. And have you testified under oath before?

1           **A.    Yes.**

2           Q.    How many times?

3           **A.    I don't know.**

4           Q.    More than one?

5           **A.    One deposition.   And multiple times with**  
6 **probation revocations.**

7           Q.    So when you say "multiple times with  
8 probation revocations," were they in the context of  
9 court proceedings?

10          **A.    Probation violations.   Yes.   It's a court**  
11 **proceeding.**

12          Q.    So they were probation violation matters  
13 that were in court?

14          **A.    Yes.**

15          Q.    And so how many times would you say you  
16 have testified under oath in court?

17          **A.    I mean, it's been 30 years ago.   So more**  
18 **than -- probably more than five, less than 15.**

19          Q.    So you're used to being sworn and  
20 testifying to the truth of matters, correct?

21          **A.    Yes.**

22          Q.    And that was only one time you said in the  
23 context of a deposition that that has taken place?

24          **A.    Yes.**

25          Q.    So you then, I assume you sort of know the

1 ground rules for such proceedings, to listen to the  
2 question that is asked of you, and not to answer if you  
3 don't understand?

4 **A. Yes.**

5 Q. Seek clarification if something seems  
6 ambiguous or you're uncertain of what's being  
7 requested?

8 **A. Yes.**

9 Q. And we'll try not to speak over each other.

10 **A. Okay.**

11 Q. And myself, I need to remind myself for  
12 that. I am from New York and we tend to speak fast  
13 sometimes, so I also want to check myself in that  
14 respect.

15 If you need a break, that's fine. If you  
16 want a break. Just let us know. Let your attorney  
17 know. But if there's a question that's been posed,  
18 we'd ask that that question get answered before we take  
19 a break, okay?

20 **A. Okay.**

21 Q. And you today as you sit here, you have no  
22 inability to respond accurately and correctly? Nothing  
23 impairing your ability to participate in this  
24 deposition today?

25 **A. Clarify that.**

1           Q.    Are you suffering from any medical  
2           condition, or sleep deprivation, or inability to recall  
3           that might impair your ability to be deposed today?

4           **A.    No.**

5           Q.    Is there anything I've not asked about?

6           **A.    I have kids.  I live with sleep**  
7           **deprivation.**

8           Q.    I'm not sure that's a legal matter.  Okay.

9                        So we have been reminded by Mr. Crane, who  
10           so kindly went and got us a copy of your Subpoena Duces  
11           Tecum; is that correct?

12           **A.    Yes.**

13                        **(Deposition Exhibit No. 1 was marked for**  
14           **identification.)**

15           BY MS. QUINN:

16           Q.    I'm going to show you your own specially  
17           marked copy.  You can work from yours if you wish.  We  
18           have marked it here as Exhibit 1 for purposes of  
19           today's deposition, a Subpoena Duces Tecum that was  
20           delivered to your attorney in this matter.

21                        Have you seen it before?

22           **A.    Yes.**

23           Q.    And you're familiar with its contents and  
24           its warnings?

25           **A.    And its warnings?**

1           Q.    Yeah.  Just indicating that, you know, you  
2   must respond as directed and bring the materials that  
3   have been requested of you?

4           **A.    Yes.**

5           Q.    And you see that there's an exhibit  
6   attached to this item that lists various materials that  
7   we have sought from you today?

8           **A.    Yes.**

9           Q.    And I'm just going to take you through  
10   that, that list of items, just so that we're clear  
11   about what those requests are and what you have brought  
12   as responsive to those requests.

13                    So was there a request for communications  
14   between you and anyone else between January 1st of '16  
15   to the present that refers to or relates to juvenile  
16   life without parole hearings, inmates, and the  
17   plaintiffs here.

18                    Did you bring any materials responsive to  
19   that?

20           **A.    Yes.**

21           Q.    And what are those materials?

22           **A.    It's been provided to you.**

23           Q.    Right.  So are you able to say which of the  
24   materials -- and I'll note for the record that we have  
25   been provided with Attorney General's documents 1

1 through 176 today. They've been provided to me at  
2 least in three stacks, so it's a little unclear to me  
3 which.

4 **A. Which ones I provided?**

5 Q. Yeah.

6 **A. I believe, from what I understand in**  
7 **looking at it, I believe it probably starts at**  
8 **number 48. And a lot of this stuff may be duplicates.**  
9 **Because anything I had that pertained to that I just**  
10 **made copies and provided it.**

11 Q. And by "duplicates" you mean I might have  
12 been provided some of these documents in the document  
13 production that occurred earlier in these proceedings?

14 **A. Yes.**

15 Q. So with that clarification, you indicated  
16 that you think the document marked or Bates-stamped  
17 48 provided to us today starts the items that cover  
18 communications between you and anyone else from  
19 January '16 until the presentment relating to JL WOP  
20 and the inmates impacted by juvenile life without  
21 parole sentences and our clients?

22 **A. From what I can tell, it appearance that I**  
23 **provided documents beginning at number 48 up to 176.**

24 Q. As responsive to that first request?

25 **A. Actually, it's responsive to all the**

1       **requests.**

2               Q.    Okay.  I'm just trying to, if we can, I  
3    want to make sure that we're not missing anything and  
4    that no request has been overlooked.

5               So as far as the first request in this  
6    document, number one, all communications between  
7    January of 2016 to the present.  You said it starts at  
8    48 and runs through what.

9               A.    This may be difficult.  Because what I did  
10   was I took these questions, anything that pertained to  
11   these questions, I copied and put it into one larger  
12   packet.

13              Q.    So you didn't segregate by response?

14              A.    I didn't segregate by response.  I just  
15   brought what was asked to be brought.

16              Q.    Have you provided responsive documents to  
17   each and every one of the eight items that have been  
18   listed here in the rider?

19              A.    Yes.  To the best of my knowledge,  
20   everything that I had that dealt with juvenile life  
21   without and your four defendants that I was involved  
22   with, that was not privileged, was provided.

23              Q.    All right.  And what about notes and  
24   memoranda created by you relating to JL WOP?  And to be  
25   clear, when we say JL WOP today, I think we all

1 understand juvenile life without parole. You're all  
2 right with that designation?

3 **A. Yes.**

4 Q. So notes and memoranda relating to JL WOP?

5 **A. Yes. From what I -- everything that I can**  
6 **tell, I have provided everything that was involving**  
7 **these juvenile life withouts, including memoranda,**  
8 **notes, communications that I would have had.**

9 Q. All right. So, for instance, No. 5 asks  
10 for all non-privileged documents in your possession,  
11 custody and control relating to the allegations in the  
12 complaint.

13 So, for instance, emails between you and  
14 your colleagues relating to this lawsuit; have you  
15 produced those items for today?

16 **A. Yes. I don't know if there were very many.**  
17 **Everything that dealt with these defendants I have**  
18 **produced.**

19 Q. I asked about the lawsuit itself. So not  
20 just -- it's relating to the allegations in the  
21 complaint, so it's not just these defendants.

22 Did you provide these for today?

23 **A. What I think was non-privileged, yes, the**  
24 **interrogatories, all that, I mean, that stuff was not**  
25 **provided.**



1           Q.    I'm not following.  What interrogatories  
2   were not provided?

3           **A.    Unless --**

4           MR. CRANE:  I think he's talking about  
5   emails between his -- us -- and DOC legal counsel about  
6   what we were -- what information was going to be  
7   provided for Interrogatories.

8   BY MS. QUINN:

9           Q.    And I will clarify.  I'm not asking for any  
10   emails from your attorneys in this matter.  But emails  
11   between you and any staff members of MDOC, emails  
12   between you and any parole board officials?

13          **A.    Yes.  I mean, to my knowledge, you have**  
14   **everything.  There's maybe some emails between myself**  
15   **and our department legal counsel that I feel were**  
16   **privileged and did not provide.**

17          Q.    And can you talk more about that?  Why you  
18   felt like those were privileged?

19          **A.    It was communications back between the two,**  
20   **as far as a lot of it was responding to as an**  
21   **intermediary between our department legal counsel and**  
22   **the Attorney General's Office.**

23                You know, there may be questions that go  
24   through our department legal counsel that needed  
25   confirmation through me.

1           Q.    All right.  So the department's legal  
2   counsel, and by that you mean the MDOC general  
3   counsel's office?

4           **A.    Yes.**

5           Q.    And those individuals are part of MDOC  
6   staff, correct?

7           **A.    Yes.**

8           Q.    And they're not representing you personally  
9   in this matter; they're not the attorney of record on  
10  behalf of MDOC in this matter?

11          **A.    They're not the attorney of record.**

12          Q.    In this matter?

13          **A.    In this matter.  They're not representing**  
14 **us as a -- for this matter, no.  It's the Attorney**  
15 **General's Office.**

16          Q.    But they helped create policies and  
17  practices for MDOC, correct?

18          **A.    Clarify that.  I'm not sure.**

19          Q.    So the general counsel's office of Missouri  
20  Department of Corrections is part of the group of  
21  staffers who helped create policies for the Missouri  
22  Department of Corrections?

23          **A.    I think every division creates their own**  
24 **policies.  Our department counsel may review some**  
25 **policies before they are finalized.  But as far as**

1     developing policies, I'm not sure how -- creating is  
2     maybe too strong of a word.

3             Q.     They participate in the conversation about  
4     development of policies and implementation of policies?

5             A.     Yes. Yes. If they are -- if there's some  
6     concern with those policies they do a legal review.

7             Q.     Let me turn to No. 6 on our list. Data  
8     sets, compilations, reports, abstracts, referring to  
9     statistical information about JL WOP parole hearings,  
10    including, but not limited to, their outcomes.

11            Did you bring those materials today?

12            A.     We provided our juvenile life  
13    without, yes, spreadsheets which talks about some of  
14    that.

15                    There's also -- actually, yesterday I did a  
16    data analysis of board decision-making on juvenile life  
17    withouts to try to get a feel with where the board was  
18    involved, how the board was making decisions in  
19    juvenile life withouts. That was included also based  
20    on the data from the spreadsheet.

21                   MR. CRANE: I don't know if we have a copy  
22    of that in the packet because Steve mailed it to us  
23    yesterday.

24                   MR. SPILLANE: It's the third thing. I  
25    think.

1                   MR. CRANE: I'm talking about the thing he  
2                   emailed us yesterday at 4:30. I forwarded it to you.  
3                   You said thanks.

4                   We'll make you copy if we don't.

5                   THE WITNESS: I've got a copy of it right  
6                   here. This was the stuff I was gonna provide.

7                   MR. CRANE: Hand it to Mike and I'll hand  
8                   it to them.

9                   BY MS. QUINN:

10                  Q. All right. Is there anything else that is  
11                  not before us today that you -- strike that.

12                  We've been provided with documents 1  
13                  through 176 as purportedly responsive to our requests  
14                  one through eight attached to this subpoena. We have  
15                  now been provided with an additional document that  
16                  appears to be responsive.

17                  Is there anything else that you can think  
18                  of that is responsive to these requests that you have  
19                  with you here today? And I see some stacks of  
20                  documents in front of you or perhaps back in your  
21                  office.

22                  **A. Not that I'm aware of. Not that I have a**  
23                  **copy of at least. Let me -- I mean, I'm not aware of**  
24                  **anything else.**

25                  Q. So there's awareness and then there's

1     having a copy it. I don't mean -- I know this is  
2     annoying -- but you've indicated not that you're aware  
3     of and you said not that I have a copy of it. Perhaps  
4     meaning you're aware of something but you don't have  
5     your hands on it.

6             **A. I indicated not that I have a copy of it.**  
7     **Because outside of Probation & Parole, we have**  
8     **a -- people that do data runs and stuff like for other**  
9     **matters. So I don't know what everybody else has done.**  
10    **What I can speak to is the stuff that I have sent you**  
11    **guys, have had a copy of, to the best of my knowledge.**

12            **Q. Very well. And I'll just note for the**  
13    **record for counsel I won't mark this 1 through 176 that**  
14    **you-all -- I may mark these later. I'll proceed with**  
15    **my questions now to Mr. Mueller. And thank you for**  
16    **bringing the documents you brought.**

17            **A. You're welcome.**

18            **Q. So beyond bringing the documents, did you**  
19    **do anything else to prepare yourself for this**  
20    **deposition today?**

21            **A. Other than reviewing -- I reviewed some of**  
22    **the documents. I mean, the number was pretty high, so**  
23    **I didn't review in detail. That is about it.**

24            **Yesterday we just did a -- we had a**  
25    **pre-meeting with our -- with the Attorney General's**

1 Office just to -- as a prep. But other than that, no.

2 Q. And again, I don't mean to delve into your  
3 conversations with the representatives of the Missouri  
4 Department of Corrections, but you said you reviewed  
5 some documents; what documents did you review?

6 A. Well, the ones I provided. When you go  
7 through these documents, you say this is -- this is  
8 stuff that needs to be sent over. So, I mean, just  
9 reviewing stuff, like looking at this, oh, yeah, I  
10 remember it being done. We generate so many documents.  
11 I mean, when you say did you review stuff, I'm not  
12 exactly sure in what context.

13 Q. I mean did you put your eyes on documents  
14 or your computer or folder or anything in preparation  
15 for today?

16 I'm being as exhaustive as necessary.

17 A. Yes. In order to find documents that would  
18 meet the subpoena request you have to put your eyes on  
19 the computer to do data runs. As far -- or generate,  
20 you know, certain -- yes, to provide documents and go  
21 through that stuff. So we've done that.

22 I looked at the file this morning to make  
23 sure that there was nothing in there that I needed to  
24 provide. And that's why I brought more material.  
25 Because we have so -- there was a -- something from the

1 file that I think that -- it was a response from one of  
2 the juvenile life withouts to a legislator, so that got  
3 added. So that was generated from reviewing the file  
4 and making sure that we had that in there.

5 The reason I did that is because I knew  
6 that previously I was involved in responding to one of  
7 these accusations or complaints about one of these  
8 juvenile life withouts. And I looked at what we had,  
9 and I said I can't find the response in there. So I  
10 dug deeper to make sure you guys got provided  
11 everything that was available.

12 Q. All right. And when you say "the file," I  
13 heard you a couple times now say "the file."

14 Can you tell us what you mean by "the  
15 file?"

16 A. We have electronic files. And we have hard  
17 copy working files that the board member would take to  
18 a hearing. Everything that's in the -- everything  
19 that's in the hard copy file should be in the  
20 electronic file. So I went on the computer and looked  
21 at the electronic file.

22 Q. When I heard the term "file" being used it  
23 indicates there is a file for this case; is that so?

24 A. Not for the -- clarify that, "the case."

25 Q. So the federal lawsuit that is pending, is

1       there a file?

2               **A.    That's not accurate.  When I said "the**  
3       **file," I meant the file of one of the named offenders.**

4               Q.    Thank you for that clarification.

5               Beyond reviewing the computer files and  
6       hard copy files you've mentioned, have you had  
7       conversations with anyone other than the attorneys  
8       for the Missouri Department of corrections or the  
9       Attorney General's Office?

10              **A.    In -- clarify that.  Conversations**  
11       **regarding the suit?  An offender?**

12              Q.    I mean, did you talk --

13              **A.    That's pretty broad.**

14              Q.    Absolutely.

15              Did you speak to anyone?

16              Did words come out of your mouth, go in the  
17       direction to another person relating to your deposition  
18       today, to communicate with them to better prepare you  
19       for your testimony?

20              **A.    No.  Not to better prepare me.**

21              I let my chairman know that I had a  
22       deposition coming up.  I let him know that I did an  
23       analysis of our juvenile life withouts last night.  And  
24       that I sent him a copy of that.

25              But as far as preparing, as far as what to



1       **say, what not to say, no.**

2               Q.    So did you provide to us a copy of the  
3       email you sent to the chairman last night?

4               A.    **Yes. That was the one you didn't have in**  
5       **your stuff that you provided.**

6               Q.    Thank you very much.

7                       Anyone else you've spoken to about  
8       testifying at the deposition?

9               A.    **Other than just saying -- other than just**  
10       **telling people, that, yeah, I've been ordered to be**  
11       **deposed, content really wasn't, you know, no, not**  
12       **regarding content.**

13              Q.    Did anyone tell you what to say or not to  
14       say today other than your attorneys?

15              A.    **No.**

16              Q.    All right. So, Mr. Mueller, can you tell  
17       us where you grew up?

18              A.    **Columbia, Missouri.**

19              Q.    And where did go to high school?

20              A.    **Hickman High School.**

21              Q.    And did you attend college after that?

22              A.    **Yes.**

23              Q.    Where did you go to college?

24              A.    **Started at MU. Ended at Central Missouri**  
25       **State.**

1                   **(Deposition Exhibit No. 64 was marked for**  
2                   **identification.)**

3           BY MS. QUINN:

4                   Q.     And I'm going to show to you what I have  
5                   marked as Exhibit No. 64 for purposes of this  
6                   deposition.

7                             You'll note it also has Attorney General's  
8                   Bates-stamped No. 93 at the bottom. This was a  
9                   document that we were provided today.

10                            Is this a fair and accurate reflection of  
11                   your experience to date?

12                           MR. CRANE: Do you want to say what it is  
13                   for the record?

14           BY MS. QUINN:

15                   Q.     I think it's a resume, in terms of the  
16                   original title at the top of it.

17                           **A.     Yes. That's a -- that's a resume. And**  
18                   **this highlights my work with Missouri Board of**  
19                   **Probation and Parole.**

20                   Q.     So I'll go back to where I left off before  
21                   we turned to the resume.

22                            So you went to the University of Missouri  
23                   for -- yeah, for your undergraduate education. Looks  
24                   like you were there for two years at University of  
25                   Missouri Columbia; is that right?

1           **A.    Yes.**

2           Q.    And with a GPA of 2.29; is that right?

3           **A.    Yes.**

4           Q.    What was your course of study during that  
5   period?

6           **A.    Initially?   Or --**

7           Q.    Whatever happened during that two years.

8           **A.    Initially started out with computer**  
9   **science.   Ended up at some point changing to**  
10 **psychology.   Not -- I am not sure if it was at --**  
11 **declared that at MU or whether I declared that at**  
12 **Central Missouri.**

13          Q.    And so is -- you have no degree from the  
14   University of Missouri-Columbia during that two-year  
15   period; is that right?

16          **A.    No.**

17          Q.    Then you moved on to Central Missouri State  
18   in 1986; is that correct?

19          **A.    From what I remember, yes.**

20          Q.    Well, that's what's listed on your resume.

21          **A.    I would hope it's correct.   I would hope**  
22 **it's correct.   Yes.   I went there two years, so in '86,**  
23 **I believe that's when I went over to Central Missouri.**

24          Q.    You put this resume together, correct?

25          **A.    It's correct.   Did I miss a six or a five**

1 or a typo. But yes as far as this is -- I graduated  
2 from high school in 1984; I went two years at Central  
3 Missouri State -- or University of Missouri, before I  
4 transferred to Central Missouri State. Yes. I can say  
5 it is correct.

6 Q. And why did you transfer?

7 A. Why did I transfer?

8 Q. Yeah.

9 A. Um, just probably difficult -- the honest  
10 answer would be it's difficult to go to school in the  
11 same city you grew up. 'Cause it's -- I mean, it's  
12 hard to go to class because I knew everybody on campus.  
13 So I would sometimes miss class because I was talking  
14 on campus on Laurie Mall and not making it over to  
15 class.

16 I mean, that's the honest answer. I mean,  
17 did I have to transfer? No. My last semester at MU  
18 was probably my best semester with a 3.0. And part of  
19 it was just trying to get to the point where I could --  
20 I was focused. It's difficult to focus when you're not  
21 making it to class.

22 Q. And at Central Missouri State your B.S.  
23 was awarded in 1988; is that right?

24 A. Yes.

25 Q. And that's in psychology?

1           A.    Yes.

2           Q.    And what did you study at Central Missouri  
3 relating to psychology?

4           A.    It's been forever. I'm trying to think of  
5 some of the classes. They had different classes.  
6 Industrial psychology. I think I took a course in  
7 that.

8                   I couldn't tell you all of them. It's been  
9 so long ago. I mean, it's a psychology degree. We  
10 studied -- general psych was over at MU. Physiology.  
11 Statistics. I mean, there's, I'm not sure exactly how  
12 to answer that because I don't remember all the classes  
13 we took.

14          Q.    And safe to say you don't remember all the  
15 content of those courses either?

16          A.    No. I think it's safe to say that nobody  
17 knows every word of every book.

18          Q.    So between 1988 and 1989, do you recall  
19 what you were doing?

20          A.    1988 to 1989 -- I graduated in December of  
21 1988. I started in October of 1989 with Probation &  
22 Parole.

23                   In the meantime, I worked at the Prenger  
24 Center, which is the juvenile center, for about,  
25 probably four to six months.

1 I worked also part-time at a bakery.

2 Q. Prenger Center; is that a detention center  
3 for the juvenile court system?

4 A. No.

5 Q. What is it?

6 A. It's an attention center. It's not a  
7 detention center. It's an attention center.

8 Q. I don't know what that means; can you tell  
9 us?

10 A. Attention. Detention centers are more  
11 secure and require more lockdown cells. Attention  
12 centers are actually less secure, no offense, doors are  
13 unlocked but alarmed. A couple security cells. It's  
14 more for kids who don't need to be locked up in  
15 facilities that require that amount of security.

16 A lot of them are kids whose parents -- who  
17 are abusive, and the DFS has to have a place to put  
18 them.

19 Some criminal behaviors, but minor.  
20 Occasionally you get more major crime and they would  
21 end up at least temporarily being in one of the two  
22 secure cells they had at the time.

23 Q. I see. So that was for four to six months  
24 and then you went to the Department of Corrections?

25 A. Yes.

1           Q.    And how did you come to obtain your job  
2           through the Department of Corrections?

3           A.    Filled out a merit exam. Applied. I was  
4           applying for jobs in other areas, too. And then got  
5           accepted. Interviewed. Accepted a job.

6           Q.    And when you say "filled out a merit exam,"  
7           what does that mean?

8           A.    The state has a merit system that requires  
9           you to fill out -- provide a resume, not resume -- but  
10          a copy of transcripts. Make sure that the position  
11          that you are applying for you're qualified to receive.

12          Q.    So is it a test of substantive specialized  
13          information?

14          A.    No.

15          Q.    What is the exam part?

16          A.    It's -- it's not an exam as you would --  
17          it's more of a -- the merit exam is more of just an  
18          application. I guess that's more of a proper term.  
19          Merit application.

20          Q.    Did they tell you it was called a merit  
21          exam?

22          A.    That may have been my -- there's merit  
23          exams for people like clerical that have to type a  
24          certain number of words a minute. It was probably a  
25          merit application is probably more the title.

1 Q. And did you know --

2 A. It's been 30 years ago.

3 Q. Did you know anybody at the Missouri  
4 Department of Corrections when you applied?

5 A. No.

6 Q. And when you had your first job with the  
7 Missouri Department of Corrections, is it correct here  
8 that you were working in District 26 Probation & Parole  
9 office?

10 A. Yes.

11 Q. And your resume indicates your job title  
12 was state Probation & Parole officer, correct?

13 A. Yes.

14 Q. Can you tell us what you did in that  
15 capacity?

16 A. I supervised offenders in a satellite  
17 office in Montgomery County.

18 As part of that supervision I conducted  
19 presentence investigations. Occasionally pre-trial  
20 bond investigations. We did supervision of offenders  
21 on regular supervision. We did supervision of  
22 offenders on electronic monitoring. Just a whole array  
23 of things.

24 Attended court. I was court liaison for  
25 Montgomery County. Did whatever the judge asked us to



1 do. That's one of your -- also worked part-time in  
2 Audrain County for a while as a -- because they needed  
3 assistance over there. But standard supervision of  
4 offenders.

5 Q. When you say "part-time" --

6 A. It was actually -- when I say part-time, I  
7 had a full caseload in Montgomery County, and had a  
8 handful of cases in Audrain County that I also  
9 supervised, the same type of supervision.

10 Q. When you moved from your work at the  
11 juvenile attention center to MDOC, did you have any  
12 kind of specialized training before you took your job  
13 with MDOC?

14 A. Yes. They had a -- they had a four-week  
15 training for Probation & Parole officers.

16 Q. So for four weeks, five days a week, eight  
17 hours a day you attended training?

18 A. Four -- it wasn't all four. I don't  
19 believe it was four in a row. I think we probably  
20 broke it down into two and had some supervision and  
21 then two.

22 We were provided four full weeks of  
23 training. Now, whether that was eight to five, eight  
24 hours, I couldn't tell you, because sometimes if you  
25 got done with the curriculum early you may get out at

1       4:30. But it was a 40-hour training.

2               Q. So 40 hours training over the course of  
3 four weeks?

4               A. Forty hours of training each week. It was  
5 a full-time, five days per week, training. I don't  
6 know whether one day started at ten to allow travel.  
7 I can't tell you when it was, but four weeks of  
8 training.

9               Q. And what topics were covered during the  
10 training?

11              A. I do not remember. Report writing I know  
12 was in there. I mean, the specific curriculum I could  
13 not tell you. Investigations, there was probably a  
14 piece on. I just don't remember it all.

15              Q. And was the training online or was it in  
16 person?

17              A. In person.

18              Q. And so between 1989 and 1998 while you were  
19 at District 26 as a Probation & Parole officer, did you  
20 have any other training during that period?

21              A. Yes. There were trainings. I do not  
22 remember all. I remember we had DNA come in and do  
23 telephone training back in the '90s.

24                       There was sex offender training.

25                       There was advanced -- I don't know -- it

1       was called advanced -- it was an additional sex  
2       offender training that we had. I mean, we periodically  
3       would attend trainings, yes.

4               Q.   Any other topics of training that you  
5       recollect?

6               A.   It's so long ago. Not that I can swear to.

7               Q.   And in 1998 you went on to working in the  
8       specialized parole violator unit? Would that be safe  
9       to say?

10              A.   Yes.

11              Q.   And if I mischaracterize it, the parole  
12       violator unit is a separate unit than just the ordinary  
13       supervision unit?

14              A.   No. The parole violator unit is a unit  
15       within Probation & Parole Central Office that responds  
16       to parole violation reports. Not probation. Strictly  
17       a -- parole violation reports that were sent in to the  
18       board.

19              Q.   So you moved then from the district office  
20       to Jeff City at that point?

21              A.   Yes.

22              Q.   And you moved into a supervisory role,  
23       correct?

24              A.   Yes.

25              Q.   Who did you supervise?

1           A.    I supervised a clerical supervisor, who  
2 supervised a office support assistance, clerical. At  
3 one point we ended up receiving an additional employee.  
4 It was a parole officer position to assist with, you  
5 know, some of the stuff. So I supervised him once he  
6 was brought on board. I don't have a date when that  
7 occurred. It's been a long time ago.

8           Q.    Any training that took place during the  
9 period of time you were serving in that role from 1998  
10 to 2001?

11          A.    I would have gone through supervisory  
12 training.

13                   I would have gone through -- FMLA training  
14 should have been part of that supervisory training.

15          ADH. The discrimination training, which we  
16 do ongoing.

17                   That's all I can swear to for sure.

18          Q.    And then in 2001 you had a job change again  
19 to become a parole violator analyst; is that right?

20          A.    Yes.

21          Q.    And how did that come to be? Is that --  
22 you were elevated? Or did you apply? How did you get  
23 that position?

24          A.    That position, because of the workload in  
25 the parole violator unit, my supervisor was unable to

1 do all of the review of violation reports. So I was --  
2 I got assigned a lot of -- part of her duties in order  
3 to get the work done.

4 Eventually, because I was working out of  
5 class, I was not promoted, I was re -- it's not  
6 reassigned. It was not a promotional interview. It  
7 was a -- we did a position description to OA.

8 They said yes, you're working out of class,  
9 so the division basically has to either elevate your  
10 class or take those duties away, which it was unable to  
11 do because there was too many -- too much work for one  
12 person to do.

13 Q. And who initiated that procedure to have  
14 this new job description created and have you move into  
15 that new class role?

16 A. My supervisor.

17 Q. And then once that happened were there any  
18 new training sessions, or new required educational --  
19 or any educational requirements in that new parole  
20 violator analyst role?

21 A. I believe the analyst position didn't have  
22 formal training curriculum, no.

23 Q. And then in the role of parole violator  
24 analyst, looks like you served in that role for  
25 11 years?

1           A.    Um, yes.  Yes.

2           Q.    And then in 2012 you became a lead parole  
3 analyst?

4           A.    Yes.

5           Q.    How did that switch happen?

6           A.    That -- I'm trying to remember if I --  
7 reclassified is what happened my initial time.  That  
8 was the word I was looking for.  I believe that was  
9 through an interview process.  Because I think there  
10 was other analysts that were wanting that position,  
11 too.

12          Q.    So is it your recollection there was a job  
13 posting, internal job posting you applied to?

14          A.    I don't remember at this point.

15          Q.    And up to this point, 2012, before you  
16 become a lead parole analyst, how much interaction did  
17 you have with the parole board itself?

18          A.    Probably -- I mean, we had daily  
19 interaction.  Because we were reviewing violation  
20 reports, and some of those were being sent to the board  
21 for votes.  So there would be that kind of, you know,  
22 they would receive a hard copy file.

23                Other times there would be cases that we  
24 were -- we would talk to the board separately.  You  
25 know, talk to the board member who was going to be

1 reviewing it, and say, this is where I'm at. What do  
2 you think? Kind of discuss, you know, the pros and  
3 cons to continue somebody on supervision or returning  
4 someone to prison.

5 Q. So outside of the parole violation hearing  
6 process you were having informal conversations with  
7 board members about what might be done on a particular  
8 parole violation case?

9 A. This is not outside the parole hearing  
10 process. We haven't gotten even to a formal hearing.  
11 These are way prior to that process. This is violation  
12 reports coming in, that we have not ordered an offender  
13 returned or continued.

14 But, yes, we would have additional  
15 conversations on some cases where we were wavering  
16 whether or not to keep them in the community or to  
17 return to prison. Or to do another, like,  
18 institutional programming. You know, institutional  
19 treatment. A wide range of options that the board  
20 would have.

21 So, I mean, the discussions would be, you  
22 know, they want to put this guy in a community release  
23 center, but I think he's got a home plan that would  
24 justify electronic monitoring and staying with his  
25 family. You know, those types of conversations.

1           Q.    And during this period, your office, is it  
2    in the same office space after the parole board  
3    members?

4           A.    Define office space.  It's in the same  
5    building.

6           Q.    Same floor?

7           A.    We were on the same floor.  But we were  
8    not -- we were on the opposite side of the building.  
9    My unit.

10                  My office was -- the board members were on  
11   one side of the building, the analysts' offices were  
12   down the other side of the building, and I was close to  
13   the far end.

14           Q.    And while parole violator analysts are on  
15   the same floor but on the other side of that floor, you  
16   were able to walk into the space where the parole  
17   members were officed to speak with them?

18           A.    Of course.

19           Q.    And then when you moved into the role of  
20   lead parole analyst did your office space change?

21           A.    No.  Actually, the outline of the office  
22   that I gave you before was our old office.

23                  Now when I was still a violator analyst, we  
24   moved to a new building.  And then that office makeup  
25   changed to the point that the board members were on one



1 side of the building. We were on the -- all on one  
2 floor. But my office was more towards the front of the  
3 building. So I could still walk around the corner.  
4 But, no, my office didn't change.

5 Q. So I didn't get too confused on the  
6 building move; do you know when that was, around about?

7 A. I don't know.

8 Q. Some time though between 2001 and 2012?

9 A. Yes.

10 Q. And currently the office space is such that  
11 the parole board members are on one side of the hallway  
12 and the analysts are on the other?

13 A. No.

14 Q. Tell us me the setup now.

15 A. Parole board members on one side of the  
16 office. Hearing analysts -- which we have five  
17 of -- are in the same hallway, but on the opposite side  
18 of the hall, or in the hall.

19 And then the violator analysts are  
20 on -- more towards the front of the building. And as  
21 lead analyst, that's where my office remained.

22 Q. So throughout the time you were lead parole  
23 analyst from 2012 until your recent job change, you  
24 were towards the front of the building, but still on  
25 the same floor as the board members?

1           **A.    Yes.  It's a one-story building.  There's**  
2           **one floor only.**

3           Q.    And about how many offices Aaron that  
4           floor?

5           **A.    In our whole central office complex, I**  
6           **would say probably best guess is 25.  There's**  
7           **additional cubicles specific to offices.**

8           Q.    So in front of a violator analyst office  
9           there might be a cubicle with support staff?  Is  
10          that --

11          **A.    Yes.**

12          Q.    Any common areas where people congregate on  
13          that floor?

14          **A.    I mean, we have a break room.  There's**  
15          **hallways.  There is -- we have two -- we have a board**  
16          **room.  We have a conference room.**

17                But as far as just congregate and talk  
18          amongst themselves, generally that's gonna be -- I  
19          mean, if someone comes in it's usually going to be  
20          something in an office, I would assume.  But that's  
21          not -- I mean, it's just like any other office.

22          Q.    But there is a designated break room?

23          **A.    Yes.**

24          Q.    And other spaces?

25          **A.    Bathrooms.**

1 Q. Designated from the offices themselves?

2 A. Yes. Lobby.

3 Q. Lobby. Okay.

4 And then during your time as a lead parole  
5 analyst from 2012 until recently, can you tell us about  
6 your job and your role?

7 A. 2012, became lead analyst. Duties at that  
8 time, I supervised the violator analysts. And  
9 one -- which was basically two staff, two analysts, and  
10 a parole officer.

11 I also did as a lead analyst, I was -- I  
12 did analyst meetings. I did, you know, I would -- I  
13 fielded questions a lot from outside parties, public  
14 defenders, attorneys, prosecutors, judges, things like  
15 that.

16 I also, as my role specific, I kept  
17 involved with interstate responses to violations  
18 through the interstate compact.

19 I kept -- had duties assigned with  
20 extradition of offenders from other states who were  
21 parole violators.

22 At that time I was doing conditional  
23 release extensions. You know, not holding hearings,  
24 but actually receiving the conditional release packets  
25 from our other divisions.

1 I'm trying to think of what other duties I  
2 had at that time.

3 A lot of little things. Like changes in  
4 special conditions requests. Requests to travel  
5 outside of the country. I would be the first reviewer  
6 on those.

7 And that pretty much was, you know, there  
8 was -- I'm sure I forgot something.

9 Video parole hearings. I was involved in  
10 getting those started. Setup. Was kind of the expert  
11 on video parole hearing equipment, whether I liked to  
12 be or not.

13 Served on, you know, some department  
14 committees. Sex offender committees.

15 Special projects as assigned. Which I'm --  
16 I'm trying to think what that would be. Any time they  
17 asked me to do something you try to accommodate if I  
18 needed to.

19 And I do designated sex offender reviews  
20 for those offenders. So that was -- I did that  
21 probably until recent, which would have been around  
22 April of 2017.

23 Q. Okay. So before we get to April of 2017,  
24 do you remember when it was in 2012 that you moved from  
25 being a parole violator analyst to the lead analyst

1 position?

2 A. I don't remember the exact date. We had a  
3 retirement -- and actually passed away before he could  
4 retire -- the lead analyst. So it would have had to  
5 have been, I believe, around summer, June, July of  
6 2012.

7 Q. And then you indicated there were others  
8 who were interested in that position, other analysts;  
9 who did you interview with for that job?

10 A. You mean who was on the interview team?

11 Q. Uh-huh.

12 A. I'm trying to remember. I know my direct  
13 supervisor was -- who was Janet Barton. I  
14 couldn't -- yeah. I'm not sure.

15 Q. Any parole member boards involved in that  
16 process in elevating you from parole violator analyst  
17 to lead parole analyst?

18 A. I'm not -- I'm not sure. I don't want to  
19 speculate. Generally on those types of decisions I  
20 would think that the chairman would have been there.

21 But, again, I mean, that whole -- I'm not  
22 exactly sure. The one I know for sure would have been  
23 Ms. Barton because she would have been the board  
24 operations manager at that time.

25 Q. Now, you've earlier indicated that in April

1 of 2017 you had another job change, correct?

2 A. Was not a job change. My title is still  
3 the same. I just assumed additional duties.

4 Q. So you are not the board operations  
5 manager?

6 A. At this time there is no board operations  
7 manager.

8 Q. Is there a posting to fill that role?

9 A. No.

10 Q. And I'm jumping around a little bit, so  
11 forgive me.

12 As to the lead parole analyst role, is  
13 there a job description for it that is posted  
14 somewhere?

15 A. I couldn't tell you for sure.  
16 It was -- there probably would had to have been some  
17 type of a job posting. That would have gone out.  
18 Initially. That, I'm not a hundred percent on.

19 Because it's not really a separate  
20 position. It's a -- you're still a hearing analyst.  
21 It's just elevated. Because you become the supervisor  
22 of those. It's not a separate merit position as a lead  
23 hearing analyst. There's a little bump in pay, but  
24 other than that, you're not -- you're still a hearing  
25 analyst with merit standards. They just designated you

1       **to be the lead person.**

2               Q.    Within MDOC there are job descriptions  
3       generally, however, for a range of positions?  Yes?

4               **A.    Yes.**

5               Q.    For junior and senior positions under a  
6       particular title?

7               **A.    That, I don't know.**

8               Q.    You've indicated that in April of '17 you  
9       assumed many of the duties of the board operations  
10      manager, but you were not given the title of board  
11      operations; is that safe to say?

12              **A.    Yes.**

13              Q.    And why is that?

14              **A.    I was the lucky person, I guess.  I mean,**  
15      **why did I assume those positions or those duties?**

16              Q.    Well, I'll break it down.  Why aren't you  
17      named the board operations manager if you're doing that  
18      job?

19              **A.    Um, there was a realignment after a new**  
20      **chairman came in.  So the board operations -- board**  
21      **operations manager position is no longer -- it's been**  
22      **moved to field operations.**

23                      **(Deposition Exhibit No. 2 was marked for**  
24      **identification.)**

25      BY MS. QUINN:

1           Q.    Okay.  I'm going to show you what's been  
2           marked as Exhibit 2 for purposes of this deposition.  
3           So I've shown to you a chart which has on it a title of  
4           Missouri Department of Corrections, Division of  
5           Probation & Parole.  It appears to be an organizational  
6           chart.

7                     Is this a familiar document to you?

8           **A.    Yes.**

9           Q.    Where have you seen it before?

10          **A.    It's been sent out at one point some years**  
11          **ago.**

12          Q.    And so you've indicated there has been some  
13          realignment of positions now that there is a new board  
14          of Probation & Parole chairman starting in April of  
15          2017.

16                     Is that a correct assessment of what you  
17          said?

18          **A.    Yes.**

19          Q.    Has anything on this chart changed as a  
20          result of that?

21          **A.    I've assumed the duties of the board**  
22          **operations manager.  That position, which is a**  
23          **corrections manager ban two, has been moved to under**  
24          **supervision of the assistant division director of**  
25          **administration.**



1                   **Now, what her specific duties are, I**  
2                   **am -- I know that she has interstate compact.**

3                   Q.    All right.  So what I'm going to do here is  
4                   ask you to bring out your creative side, Mr. Mueller.  
5                   Perhaps you can circle what, you know, what the  
6                   position is you've just mentioned, and where it's been  
7                   moved to, and X out anything that is no longer valid so  
8                   we have in front of us an accurate layout of the  
9                   organization.

10                  A.    Do you want me to do it on your paper?

11                  Q.    No, you can do it on yours.

12                  A.    This is -- I've assumed the role of the  
13                  board operations manager.

14                        That corrections manager ban two  
15                   position -- because there is no board operations  
16                   manager position titled in that way -- it's now right  
17                   here.  (The witness indicated.)  And my understanding  
18                   is that she has oversight of the community corrections  
19                   coordinator, and the interstate, and all the stuff on  
20                   this end.

21                  Q.    And so you're talking about something ban  
22                   two.  I don't know what that means.

23                        Are you talking about the assistant  
24                   administrator?

25                  A.    No, that's an unclassified position, I

1     believe. But she directly reports to the assistant  
2     director of administration.

3                     And my understanding of her job duties --  
4     which, I mean, this is from what I believe she's  
5     doing -- is oversight of the community corrections  
6     administrator and interstate compact, electronic  
7     monitoring, command center and retentional facilities.

8             Q. And the "she" in that sentence, are you  
9     talking about Kelly Dills?

10            A. Yes.

11            Q. Kelly Dills used to be the board operations  
12     manager?

13            A. Yes.

14            Q. She's no longer that person or in that role  
15     as of April of 2017?

16            A. Yes.

17            Q. She's been moved over now to oversee  
18     community corrections and some of the other items on  
19     the right-hand side of the chart; is that right?

20            A. Yes.

21            Q. And you are doing her job in content but  
22     not in title?

23            A. Um --

24            Q. Part of her job?

25            A. Yeah. A lot of the duties related to

1 supervision of the analysts, and a lot of her duties as  
2 board operations manager I was assigned. You know,  
3 yes, I was assigned.

4 Does not mean that my -- that position  
5 won't be elevated because I've done a position  
6 description. Because I think I'm working outside  
7 of -- I think what I'm doing now more relates to a  
8 corrections manager ban two than a lead analyst. Or,  
9 actually there's no lead. It's a hearing analyst. In  
10 a sentence.

11 Q. Can you mark on your chart, so we're clear  
12 on the record, Kelly Dills, where she fits in there now  
13 and what her title is?

14 A. I do not know what her specific -- what  
15 they call her. I can tell you that that position is a  
16 corrections manager ban two. Now, whether they call  
17 that something else, that, I'm not aware of, 'cause I  
18 don't deal with field services, but where that box is.

19 Q. So safe to say she's been demoted?

20 A. No. She's not been demoted. She carries  
21 the same corrections manager ban two position that  
22 she's always had. She's just not working for board  
23 operations at this point.

24 Q. And this box that we've all X'd through,  
25 this board operations manager, and you're sort of

1 serving in that role but as a lead analyst title, does  
2 that operations manager -- there's a line that sort of  
3 goes across on the chart and connects up to a line that  
4 runs down to chief supervisor; does that mean the board  
5 operations manager-type role? Or you oversee the chief  
6 supervisor?

7           **A. No. I think that line is there because**  
8 **this position, and the former board operations manager**  
9 **position, did not report to the chief state supervisor**  
10 **but reported to the chairman.**

11           **So the chairman -- the chief state**  
12 **supervisor reports to the chairman, as does the board**  
13 **members, and as does the board operations manager**  
14 **previously. But myself, my direct supervisor is the**  
15 **chairman.**

16           **Q. And who is the chief state supervisor right**  
17 **now?**

18           **A. Julie Kempker.**

19           **Q. And is it safe to say in this box of board**  
20 **operations manager, but not in title, are now**  
21 **overseeing parole hearing analysts, parole violator**  
22 **caseload managers, analyst managers and caseload**  
23 **managers?**

24           **A. Yes.**

25           **Q. And all -- are all those folks in the -- in**

1       that same area, that floor that we described earlier,  
2       with about 25 plus or minus offices?

3           **A.    A lot of these -- the parole hearing**  
4       **analysts are in offices. The caseload managers,**  
5       **they're in my chain of command, but we have a -- an OSA**  
6       **is the title position -- that supervises the clerical**  
7       **SOSAs of each of those places. These -- each of those**  
8       **OSAs. Other than the appeal hearing analyst.**

9           The parole hearing analysts I directly  
10       supervise. And I directly supervise a -- the violator  
11       analysts, and I directly supervise the AOSA, who  
12       supervises these. And I directly supervise one PO 2  
13       position.

14          **Q.    All right. So these four boxes on the**  
15       **chart we're all looking at together, that are below the**  
16       **board operations manager box, all of those roles, all**  
17       **of those staff do not necessarily report to -- not**  
18       **necessarily overseen by you at this point?**

19          **A.    No, they are overseen by me. I do not have**  
20       **direct supervision of them. I supervise the AOSA, who**  
21       **has -- each one of these units have SOSAs in them. And**  
22       **then she supervises them.**

23          **Q.    So they're not your direct reports?**

24          **A.    But they're all under my chain of command.**

25          **Q.    Now, the bodies, are their bodies on the**

1 floor, that we just talked about earlier, where  
2 there's, like, 25 offices plus or minus at the Board of  
3 Probation & Parole?

4 **A. What do you mean?**

5 Q. Where do they report to work every day?

6 **A. Yes. A lot of them are in cubicles. These**  
7 **folks all report to our central office building.**

8 Q. And are they on that same floor as you? Or  
9 are they on different floors?

10 **A. Our building is only one floor.**

11 Q. I apologize.

12 What about Kelly Dills; where does she  
13 report every day now?

14 **A. To this office also.**

15 Q. Same office building?

16 **A. Yes. Every -- nearly everybody -- most of**  
17 **the people that Aaron this chart are in our office.**  
18 **There's some we have across the street. We have some**  
19 **in a warehouse.**

20 Q. And we're going to talk some more about  
21 change in staff and Kelly Dills, but for the moment, I  
22 want to show you what I'm marking as Exhibit No. 3 for  
23 purposes of this deposition.

24 **A. Okay.**

25 **(Deposition Exhibit No. 3 was marked for**

1       **identification.)**

2       BY MS. QUINN:

3               Q.     And I will say, as we get done with marked  
4       exhibits, if you can give them to the court reporter.

5               So this Exhibit 3 is titled Defendants'  
6       Initial Disclosures under Rule 26 A1A.

7               Would you mind taking a look at the list of  
8       names here. You'll see names that span about five  
9       pages with different titles. And if you see anything  
10      that's incorrect or has changed, can you mark that for  
11      us or note that for us?

12              **A.     Yes.   Mr. McSwain is retired.**

13              **Mr. Ruzicka resigned.**

14              Q.     Is that how you say his name?

15              **A.     Yes.**

16              Q.     The operations manager is probably -- I  
17      would assume is what her current title is -- but it  
18      deals more with field operations as opposed to board  
19      operations. I don't know what the date of this  
20      document is.

21              MR. CRANE:   Probably two or three months  
22      ago.

23              THE WITNESS:   Given that, I would assume  
24      that's probably what her job title is. It's still a  
25      corrections manager ban two.

1 BY MS. QUINN:

2 Q. Okay.

3 A. There's some people that I -- I don't know  
4 everybody on this list.

5 Q. Okay.

6 A. Aaron Jarrett, I think he's a unit  
7 supervisor, but I'm not -- I can't swear by that.

8 Aaron Jarrett. I don't know. I'm not a  
9 hundred percent. He is the chief CAO of the office in  
10 south central, so that would be either a district  
11 administrator or, I believe, it's probably a unit  
12 supervisor position.

13 Q. And I'll interject here with a question:  
14 These institutional parole officers, or IPOs, do they  
15 fall within your portfolio?

16 Are they among the folks that are in those  
17 four boxes we talked about?

18 A. No. These are institutional appeal  
19 officers and supervisors, they are all supervised under  
20 the chief state supervisor. And under her title, it  
21 would be the institutional parole region. So I can't  
22 attest to what their positions are.

23 Q. Got it.

24 And anyone else here that, from your  
25 knowledge, you know, has changed roles or are no longer



1 in their position or any changes?

2           **A. The only thing I can testify to is those**  
3           **that I'm aware of, and that would be the retirement of**  
4           **Mr. McSwain and the resignation of Mr. Ruzicka, and**  
5           **that's it.**

6           Q. Great. Thank you.

7                   And again, the marked ones we can maybe  
8 move towards the corner of the table.

9                   So now I'm going to show you what's been  
10 marked as Exhibit No. 4.

11                   (Deposition Exhibit No. 4 was marked for  
12 identification.)

13                   This is the Missouri Department of  
14 Corrections Probation & Parole mission statement,  
15 correct?

16           **A. Yes.**

17           Q. And you've seen this before?

18           **A. Yes.**

19           Q. It indicates that the board -- that the  
20 parole board is committed to offender success; is that  
21 right?

22           **A. Yes.**

23           Q. And that it believes in the ability of  
24 people to change?

25           **A. Yes.**

1 Q. Also talks about accountability?

2 A. Yes.

3 Q. And accountability includes planning,  
4 measuring and managing work?

5 A. Yes.

6 Q. Can you tell us about the planning,  
7 measuring and managing work part of this statement?

8 A. There's different portions of that, I would  
9 believe. Planning, measuring and manage your workload  
10 is making sure that you get your job done in a manner  
11 that is, you know, professional and good use of  
12 resources that you're given.

13 Q. What about measuring? How does the parole  
14 board measure its work?

15 A. We have, I mean, we keep track of, you  
16 know, total number of hearings that are held.

17 We keep track of, you know, the workload.  
18 But as far as decisions by individuals, things like  
19 that, that's not -- we do not keep track of individual  
20 votes and things like that.

21 We also look at how many salient factors --  
22 scoring on parole cases.

23 We review, you know, how well we're staying  
24 within established guidelines. But those are -- the  
25 board's discretion of release is pretty broad.

1                   So we look at each case individually and  
2                   make decisions based on what we assess risk.

3                   Q.    What about measuring maturation?

4                   A.    Define that.

5                   Q.    How does the Board of Probation & Parole  
6                   define maturation?

7                   A.    You mean as far as?

8                   Q.    Maturation of inmates.

9                   A.    Well, I mean, I think we -- we look to see  
10                  if they've -- is that the same person that came in as  
11                  the person that is before them in a hearing.

12                  I mean, everyone matures, just by the time  
13                  clock for one thing. We look at how people mature in  
14                  relations to are you -- a lot of times young offenders  
15                  come in and they are trying -- you know, they get a lot  
16                  of conduct violations. We look whether they're  
17                  volunteering for programming. What their attitudes  
18                  are.

19                  Q.    Do you test folks coming and going out in  
20                  terms of age level in reading or other measures?

21                  A.    Does Probation & Parole or the department?

22                  Q.    The department.

23                  A.    I believe the department, their  
24                  educational -- they're doing that because of the  
25                  requirement to have a good-faith effort towards your

1       **GED.**

2               Q.    So MDOC testing is different from testing  
3   for age level at different stages, yes?

4               A.    I could not answer that. I can't answer  
5   what another division in the department is responsible  
6   for.

7               Q.    Well, then it's obviously not something  
8   that's put before the parole board then? It's  
9   something you're unfamiliar with?

10              A.    At the time of doing parole hearings there  
11   are a lot of times that the board is aware of reading  
12   levels. They're aware of academic achievements.  
13   They're aware of programming achievements for other  
14   things.

15                    But as far as how they scored on a reading  
16   equivalency, I mean, we're told that they get their  
17   GED. We're told that they're working on it.

18                    But as far as knowing a specific score and  
19   where they were a year before that, I don't believe  
20   that the board is apprised of that at the hearing.

21              Q.    The mission statement also makes reference  
22   to evidence-based practices under accountability,  
23   correct?

24              A.    Yes.

25              Q.    Can you tell us some of the evidence-based

1 practices in place on the part of MDOC and the parole  
2 board?

3 A. I believe one of those is we try to give  
4 lower -- we have a salient factor score that is  
5 provided at the time of the hearing. It's made of  
6 multiple factors that go into developing a score, and  
7 that is placed on -- it's applied to a time-to-serve  
8 guideline.

9 Some of those issues are evidence-based.  
10 We also understand that low-risk offenders  
11 generally -- studies have indicated that low-risk  
12 offenders are not -- your best bet is not to hold them  
13 long lengths of time. You know, so they have some of  
14 these understandings when they're making their  
15 decisions.

16 Q. Going back to salient factors, according  
17 to -- well, what does the term evidence-based mean?

18 A. What does the term evidence-based mean?

19 Q. Yeah.

20 A. The decisions that -- I would say that the  
21 decisions that you make for release are based on some  
22 type of valid evidence that person is good for release.  
23 It's just not, well, I feel like this guy -- I feel  
24 like this guy's a risk. You have to have some measures  
25 of that.

1           Q.    Okay.  And what courses have you taken  
2 relating to evidence-based practices?

3           A.    As far as evidence-based practices, I'm  
4 trying to remember if we've had training on that.  I  
5 know we've had some -- it's touched on in some of our  
6 training.

7                   The -- I mean, I've read through  
8 competencies of board members before.  There's articles  
9 I've read through that have talked about evidence-based  
10 programming.

11                   But as far as a specific, have I attended  
12 an evidence-based complete structure of, to my  
13 knowledge, I have not.

14           Q.    And so you've indicated that salient factor  
15 scores, in your mind, falls in the definition of an  
16 evidence-based practice using salient factor scores.

17           A.    I think -- I think it is -- we validate  
18 data.  We validate that through our planning and  
19 research as far as looking at risk.

20                   I mean, we're -- is it a perfect system?  
21 You know, assessment of offenders and risk to  
22 re-offend, it gets difficult.  We're in the process of  
23 doing other stuff, as far as looking at other  
24 assessments, but at this time, we're looking at the  
25 salient factor score.

1           Q.    So, again, I would just like to understand  
2    why you think it is evidence-based practice to use  
3    salient factor scoring?

4           A.    Why do I think that?

5                   I think some of the components on there  
6    have shown that offenders in those areas can be of more  
7    risk or less risk. And based on that, it provides some  
8    measure as to a risk to re-offend, or risky, or a good  
9    risk to release.

10          Q.    And I'm jumping ahead a bit, but can you  
11    explain to us how a salient factor score is established  
12    for an inmate?

13          A.    Some of the things are dynamic and change.  
14    Other things don't. I mean, we look at criminal  
15    behavior. Prior incarcerations. We look at substance  
16    abuse issues. Treatment can make them a better risk  
17    for release.

18                   We look at age. We look at -- I'm trying  
19    to think of the others that Aaron there. Is this  
20    person involved in high-risk offenses that are at risk  
21    for recidivism.

22                   We also look at escape. You know, you can  
23    -- salient factor takes into consideration escape.

24    So --

25          Q.    So let me make it concrete. If I asked you

1 to ascertain my salient factor score, how would you go  
2 about doing that? How would you score me?

3 A. Well, interview first of all.

4 Q. Okay.

5 A. We would look at criminal history. And  
6 this is all -- I'm not sure I'm the best person to talk  
7 to, because my field -- I come from a field supervision  
8 perspective.

9 I know what's on the salient factor score.  
10 I've never been an institutional parole officer to say  
11 you've got to do this, this and this to do it.

12 We look at the day we have. We interview  
13 the offender.

14 We look at prior -- one of the factors is  
15 prior failure of supervision. And so we would get that  
16 information, gather it up, determine a score based on  
17 those factors, and then apply it to time-to-serve  
18 guidelines.

19 Q. You've never conducted a salient factor  
20 score for an inmate?

21 A. I have -- no. That is done by an  
22 institutional parole officer.

23 Q. And safe to say you don't know how to do  
24 that interviewing scoring process?

25 A. I don't. I am aware of how they score it.



1       That's -- that is written in our policies. I have  
2       never actually taken an offender down, taken them out  
3       of his cell into the parole officer, interviewed and  
4       done a salient factor score that I'm aware of.

5             Q.    And so my hypothetical to apply the salient  
6       factor analysis to me, you couldn't do that because  
7       you've never walked through that process before?

8             A.    So to do it, I would pull that policies  
9       procedures, review those, and go from there.

10            Q.    So regardless of one's training, they can  
11       just pull out a policy and apply the salient factor  
12       score testing to figure out what somebody's salient  
13       factor score is?

14            A.    No, I don't think it's that simple.  
15       Because you have institutional parole supervisors that  
16       are available to answer questions related to scoring  
17       those factors.

18                   And so, I mean, all that stuff, if I would  
19       have to do a salient factor score on you, I would get  
20       the policy out. I would read it. I would try to make  
21       sure that I knew what was in it. Interview you. Get  
22       all the information through it, and run it through my  
23       supervisor, because I don't do that on a regular basis.

24            Q.    And this policy that you pull down and  
25       apply to me, who wrote that?

1           A.    That would be our divisional policy.

2           Q.    So who came up with this concept of salient  
3 factor scoring in Missouri?

4           A.    That was done years ago.  As far as who  
5 actually did it, I could not tell you the person that  
6 developed it.

7                   I can tell you that our research, and our  
8 planning and research, has been involved in it.  
9 Because they're the ones that helped develop it and  
10 were able to determine what scores or what factors that  
11 you look at are -- relate to potential recidivism or  
12 return to prison.

13          Q.    But you don't know what year it was  
14 developed?

15          A.    I do not know what year it was developed.  
16 It was revised several years back -- probably ten years  
17 ago -- but I don't have the date that it was revised.

18          Q.    Do you know anything about the actual  
19 science or studies that it's based upon?

20          A.    No.

21          Q.    And what about -- what kind of scoring  
22 system is it?  Is it one to 100?  One to 50?

23          A.    It is a -- the scoring is not 1 to 50.  The  
24 current revised salient factor score we use now, you  
25 get zero, one, negative one.

1                   So it's a -- I don't have a copy of the  
2                   salient factor score here now. But if you score in the  
3                   negatives, then you're a poorer risk. I think you can  
4                   go out to, I believe -- I think it's negative -- it's  
5                   negative four or five, something like that, up to the  
6                   good chance for release, which is going to be getting  
7                   lower time-to-serve guidelines.

8                   It can go up to, I believe, I think it's up  
9                   to a six.

10                  Q. But you don't know as you sit here,  
11                  correct?

12                  A. I don't know, because I don't have the  
13                  document in front of me. If I had a copy of -- if I  
14                  had a copy of the -- the salient factor score  
15                  time-to-serve guidelines in front of me. Which, I  
16                  don't think it's part of this. I mean, I didn't -- as  
17                  far as whether I know -- I mean, I don't get into that  
18                  piece of this release process.

19                  I can tell you how to apply -- I can tell  
20                  you how to apply time-served guidelines based on  
21                  salient factor score, but I've never conducted an  
22                  actual salient factor score.

23                  Q. So as a parole hearing analyst you didn't  
24                  spend time figuring out what the salient factor scoring  
25                  system was all about?

1           A.    I know what the factors are.  As a parole  
2   hearing analyst, the majority of my work as a parole  
3   hearing analyst has been in the violator world, which  
4   does not -- it does not touch on the time-to-serve  
5   guidelines on parole releases.

6           Q.    And just so we're clear, you're the analyst  
7   who's working most closely with the board right now on  
8   juvenile life without parole releases, correct?

9           A.    Yes.

10          Q.    So you've held out salient factor scores as  
11   one example of an evidence-based practice in place at  
12   the Missouri Department of Corrections, and used by  
13   the --

14          A.    Can we back up?  When you say I'm the  
15   parole hearing analyst that works most closely working  
16   with the board on releases, I work with the board  
17   related to -- I supervise the hearing analysts.  The  
18   hearing analysts are the ones that are attending the  
19   parole hearings with the juvenile life withouts and any  
20   other parole consideration hearing.

21          Q.    So the analysts --

22          A.    And I supervise the analysts.

23          Q.    Okay.  And the analysts, but not you,  
24   understand salient factor scores?

25          A.    The hearing analysts will have a,

1       they -- the hearing analysts that we have doing parole  
2       consideration hearings have all been institutional  
3       parole hearing supervisors or institutional parole  
4       officers prior to being a hearing analyst. So they  
5       will -- I would think it would be safe to say that they  
6       would have a lot more experience in conducting a  
7       salient factor score.

8               Q.     And yet you're their supervisor and you  
9       don't understand it?

10              A.     I understand the premise of it. Do I  
11       understand every piece of how do I score this? I am  
12       not the best person to do that.

13              Q.     Explain the premise.

14              A.     Pardon me?

15              Q.     Could you explain the premise behind  
16       salient factor scoring?

17              A.     About the -- yes. It's a tool that is  
18       developed to determine whether or not -- to -- to have  
19       some measure of risk. To re-offend. So we apply that  
20       to the board's time-to-serve guidelines and come up  
21       with guidelines of release.

22              Q.     Earlier, as I recollect, and this is how we  
23       went down this path, you flagged salient factor scoring  
24       as a key evidence-based practice on the part of MDOC  
25       and the parole board; yes?

1           **A. I think that's one of evidence-based**  
2           **practices tools that they use, among other things, our**  
3           **field offices use. But for parole consideration**  
4           **hearings, that's the primary one that I believe would**  
5           **be used.**

6           Q. And salient factor scoring is not used in  
7           the juvenile life without parole cases, correct?

8           **A. There are no guidelines.**

9           Q. So explain what you mean by that.

10          **A. Life sentences, sentences I believe over**  
11          **45 years. We do not apply guidelines to those.**

12          Q. So what evidence-based practice are you  
13          applying in the context of the juvenile life without  
14          parole cases?

15          **A. That, you know, that, I'm not completely**  
16          **clear. I'm not sure what -- I've got to think about**  
17          **that.**

18          Q. You are the most senior member of the  
19          parole staff who is working on juvenile life without  
20          parole cases, correct?

21          **A. Yes.**

22          Q. All right. You also mentioned a second  
23          thing that might be considered an evidence-based  
24          practice, low-risk offenders per studies.

25                   What do you mean by that?

1           A.    What I would mean by that is that there's  
2    been research that offenders who are low-risk, lower  
3    risk as far as -- the premise non-violent offenders and  
4    low-risk offenders should not be taking up beds for  
5    those that are more violent and, you know, to keep the  
6    community safe. So things like treatment. People that  
7    need treatment.

8                   Are you -- are you getting -- should we be  
9    locking up people for addicts in need of treatment, or  
10   is the best place to treat out in the community?  
11   Which, I believe, you know, community treatment I think  
12   would be shown to be more successful anyway.

13           Q.    Tell it us why you think that.

14           A.    Part of it is, we've been -- some of these  
15   studies have occurred. Part of justice reinvestment  
16   that has occurred that the state's going through has  
17   confirmed that. Through their -- through their data.

18           Q.    Any other thoughts on low-risk offenders  
19   and who might qualify as a low-risk offender?

20           A.    I believe offenders that have strong, you  
21   know, looking at criminogenic needs. Offenders that  
22   have strong families. An ability to have assistance in  
23   the community. Home plans. Those make someone better  
24   for risk.

25                   Those that have good prosocial attitudes.

1     You know, those people are good candidates for, you  
2     know, lower risk.

3             Q.     You said a lot.   What is a prosocial  
4     attitude?

5             A.     Not -- could be involving himself with  
6     people who are, like, in the community approach, social  
7     attitude would be those that are very, you know,  
8     somebody that is not taking them down areas of, you  
9     know, not gang members, not -- not -- not other justice  
10    involved offenders who are going to try to get them out  
11    of that type of a lifestyle.

12            Ones that are not -- their attitude is  
13    not -- their attitude is not what is for -- what's in  
14    it for me.   As opposed to more of a, you know, thinking  
15    about others.

16            How you act.   How you -- what, you know,  
17    probably a little more -- a better term is being a  
18    little more -- little more -- being self -- more  
19    selfless.   Thinking of others and thinking of, you  
20    know, understanding that the impact that you have  
21    is -- affects others.

22            Q.     And where are you getting that?   Is that  
23    from a book?   Or is that from a study?

24            A.     We've had some studies on criminogenic  
25    needs probably within the last year or two.



1           Q.    So the criminogenic needs theory talks  
2   about prosocial attitudes; is that right?

3           A.    Yeah.

4           Q.    And so where's that kind of come from?  
5                   Who studies that?  
6                   Who came up with that term?

7           A.    That, I don't know.

8           Q.    And where's, you know, a lot about what you  
9   think it means, where'd you get that definition?

10          A.    That's -- that definition would come from  
11   my understanding of what it is. Just from --

12          Q.    And tell us about the criminogenic needs  
13   theory.

14          A.    The big thing, my understanding of the  
15   criminogenic needs is if you -- if you can address  
16   those criminogenic needs, may be substance abuse,  
17   prosocial behaviors, it could be employment, those  
18   things that are going to make an offender a better risk  
19   to release, because it eliminates -- a lot of the  
20   employment, substance abuse, treatment, things like  
21   that -- will address some of those things and eliminate  
22   some of the obstacles of the offenders becoming  
23   involved in criminal behavior.

24          Q.    So as far as criminogenics, do you have  
25   a -- can you have too high of a needy score?

1           A.    No, I don't think that's the case. I mean,  
2   we don't -- we don't say too needy. I mean --

3           Q.    Well, how then does the parole board, which  
4   you advise, help determine somebody's criminogenic  
5   needs such that they should be released or held?

6           A.    Some of those are -- those criminogenic  
7   needs, I believe, are addressed in the prehearing  
8   report that is given to the board at the time of the  
9   hearing.

10          Q.    But you don't know for sure?

11          A.    I know that our policies require them to  
12   look at criminogenic needs.

13          Q.    And how does criminogenic needs apply to  
14   the cases of juvenile life without parole offenders,  
15   children who have killed?

16          A.    I think some of it's going to be -- some of  
17   those issues that they can, you know, education. Some  
18   of it is going to be attitude. Some of it is going to  
19   be substance abuse. What programming have you worked  
20   on or identified? What is your attitude at the time of  
21   the interview with the institutional parole officer?

22                Are you -- I mean, these cases are not  
23   -- no one case is ever the same. I mean, we have  
24   offenders who have involved themselves in multiple  
25   programming before we, you know, pre-juvenile life

1 without, you know, becoming, quote, "Miller case."

2 So in my mind -- and this is, I guess --  
3 this would be what I would -- I kind of look at some of  
4 those cases, too, and I go, "This guy has really grown  
5 up. Because he doesn't think that he's going to be  
6 released and he's still trying to improve himself."

7 Now those that now have -- I mean, I don't  
8 know the motivation of theirs. I'm not really sure I  
9 really care as much about motivation as I do as what  
10 are you doing to make yourself ready for release.

11 Does it matter whether -- if you're an  
12 alcoholic, and you -- you go through treatment and quit  
13 drinking, do I really care what the motivation was?  
14 The end result is, are you safe, sober and productive.  
15 You know what I mean?

16 Q. So you raised a point about juvenile life  
17 without parole offenders; did they undertake  
18 programming even though they thought they were not  
19 going to be released.

20 Am I correct in summarizing what you just  
21 mentioned?

22 A. Yes. There's some offenders who were  
23 involved in programming prior to their knowledge that  
24 they had an ability to be released.

25 Q. So is it your position that if somebody

1 thought they were never going to be released it should  
2 be held against them that they did not participate in  
3 programming?

4 A. Absolutely not. I think -- I do not think  
5 it should be held against them. And I don't -- I don't  
6 know what motivates. I don't know what the motivation  
7 is.

8 What my statement was is that when you have  
9 somebody that has no ability to be released, but is  
10 taking steps to improve themselves, I mean, that, to  
11 me, says that that person has matured. And has made a  
12 statement that regardless -- if I'm in prison my entire  
13 life, I want to better myself.

14 Q. So we got into this line of conversation by  
15 talking about who might qualify as a low-risk offender.

16 Do you have any understanding of, on  
17 average, children who have killed, how high of a risk  
18 are they for re-offending?

19 A. I don't have statistics on that.

20 Q. So do you know anything about the  
21 likelihood of such youth potentially re-offending?

22 A. I don't have statistics on that.

23 Q. Do you have a book, an article, knowledge,  
24 beyond statistics?

25 A. I think -- I think if you look at murder

1       cases in general, murder cases have lower recidivism  
2       rates than a lot of other, like property crimes.

3               Q.     So you mentioned the justice reinvestment  
4       initiative that is underway, correct?

5               A.     Uh-huh.

6               Q.     That is the effort on the part of  
7       Governor Greitens, who's brought in outside  
8       organizations to look at our system, to determine the  
9       ways in which it is inefficient, and perhaps keeping  
10      people incarcerated beyond the time when they ought to  
11      be; is that a fair summary?

12              A.     It's an overall view of our system from top  
13      to bottom. Looking at -- going anywhere from pre-trial  
14      up into release.

15                   And, yes, I mean, they're taking a look at  
16      the entire system, including practices of release and  
17      assessment of offenders' risk. Yes.

18              Q.     And that justice reinvest initiative is  
19      working with the task force that was appointed by  
20      Greitens in the fallout, for lack of a better term, of  
21      Mr. Ruzicka's resignation.

22                   Is that your understanding?

23              A.     I -- that's not my understanding of  
24      the -- of the reason why they put the task force  
25      together. It's not solely looking at parole board

1 processes, which would have been, to me, that's  
2 Mr. Ruzicka, that issue.

3 This is a top-to-bottom review, including  
4 practices of bond, pre-trial board releases. It's not  
5 designated saying -- I don't believe this was developed  
6 to address the Ruzicka issue.

7 Q. And the task force has a timeline that it's  
8 following; is that fair to say?

9 A. Yes.

10 Q. Sounds like you may be following this  
11 pretty closely, what they're up to?

12 A. I've attended some of the meetings, yes.

13 Q. Have you shared any views at those  
14 meetings?

15 A. Um, in the absence of Mr. Jones, I'm not  
16 sure if I shared any views. I clarified one. I think  
17 I spoke and clarified one issue related about a  
18 process.

19 But as far a -- I'm not involved in sharing  
20 views directly with the task force. I have met with  
21 some of the people that are presenting at the task  
22 force, as far as, you know, looking at what better ways  
23 that everyone can do business.

24 Q. Okay.

25 A. Including the board. I mean, we're looking

1 at assessment tools that may be better than what we  
2 have.

3 Q. Can you share what those assessment tools  
4 are?

5 A. Well, we have not selected any. We've  
6 looked at several. But we are, as an agency, we are  
7 looking at the ability to do better case management  
8 through an assessment tool that -- and this is -- an  
9 assessment tool that will be started at the time of  
10 entry into the system, whether it's probation,  
11 pre-trial, and it will follow throughout the system,  
12 and feed -- identify needs of the offender and  
13 hopefully keep them out of the system.

14 Get them to -- take care of them before  
15 they get into prison. The hope is to get an assessment  
16 that will be an ongoing case management assessment that  
17 will go in and out of prison, as you circulate through.  
18 Hopefully, they don't circulate through. We want  
19 something that the user -- it's not a step in the  
20 system that you get a different assessment tool. It's  
21 a better -- we're looking at better systems.

22 Q. And none of that is being used right now?

23 A. Those assessment tools are not being used  
24 at this time.

25 MS. QUINN: Let's take a break.

1 (A break was taken.)

2 BY MS. QUINN:

3 Q. At this point I'd like, after the break, to  
4 turn our attention to the bodies of law or authorities  
5 that are relied on in the parole system.

6 So, Mr. Mueller, can you share with me what  
7 are sort of bodies of law or authorities that control  
8 the practices of the parole board?

9 A. Statutes that are listed in 217 are related  
10 to parole. I didn't bring those with me. I do  
11 have -- there's also those with the juveniles' life  
12 without because those have to do with this proceeding.

13 Q. So the statutes. Any other laws or  
14 authorities that are relied upon in the parole board's  
15 work?

16 A. Explain that.

17 Q. Any other body of law?

18 A. Authorities?

19 Q. Legal authorities, yeah.

20 A. I mean, there's authorities. That's --  
21 the appointment of board members is also outlined in  
22 law.

23 You know, parole abilities, acts that's  
24 outlined in our statutes.

25 Juvenile life withouts, those statutes are



1 followed.

2 We have -- there's case law that occurs  
3 that we, you know, you look at that try to make sure  
4 that you're in line with that. And that policies are  
5 in line with that.

6 Q. So you mentioned case law. What case law  
7 would apply to the cases of juvenile life without  
8 parole matters?

9 A. Well, the first one was Miller. And then  
10 there's been several others after that.

11 There was just recently one, I believe,  
12 that we received about -- I'm trying to think what the  
13 name of it was. But as far as do I have the names of  
14 the cases? I do not have all of those. I know Miller  
15 is the first one that came out.

16 Q. Have you read all of the Miller decision?

17 A. Have I read all the Miller decision? Yeah,  
18 when it first came out. But that was several years  
19 ago.

20 Q. How many other cases have you read related  
21 to the juvenile life without parole cases?

22 A. I'm trying to remember. There was one that  
23 was -- we just recently had a ruling on one. I believe  
24 I might have that in here.

25 You mean read an entire case other than

1     **Miller's? I have not read -- I mean, we usually get**  
2     **stuff from our legal counsel that says, "this is what**  
3     **came out of it and this is what didn't."**

4             Q.     So you receive summaries?

5             A.     **Yeah. Some type of summary. I probably**  
6     **did not read the entire Miller. I probably read a**  
7     **summary of Miller.**

8             Q.     Okay. So you're amending your answer about  
9     Miller?

10            A.     **Yes.**

11            Q.     Okay. So safe to say you haven't read the  
12    entirety of -- none of the United States Supreme  
13    Court's cases relating to juveniles' sentencing and  
14    meaningful opportunities for release?

15            A.     **I have not read any of the entire cases.**

16            Q.     Okay. So far you've mentioned law, or  
17    authority that might get relied upon, statutes. You  
18    mentioned statutes and case law.

19                    Any other body, or authority, or law that  
20    the board relies on, that you rely on, when you do your  
21    job?

22            A.     **I mean, I'm not sure if you consider**  
23    **policies and procedures part of that authority.**

24            Q.     Okay. So what are policies and procedures?

25            A.     **Related to parolees.**

1           Q.    You mentioned them, so tell us what you  
2    meant.

3           A.    What I'm mentioning, our division has  
4    policies and procedures. I do not have them -- I don't  
5    have a policy and procedure manual sitting in front of  
6    me.

7                    But we have policies and procedures for our  
8    institutional parole officers to follow when doing  
9    these -- any parole, pre-parole interviews.

10                   We have, you know, we have additional  
11   worksheets that they use on these specific cases.  
12   Things like that.

13           Q.    So focusing on the policies and procedures,  
14   you said there's a policies and procedure manual?

15           A.    Yes.

16           Q.    And how does something get into the  
17   policies and procedure manual?

18           A.    We have a manual work group that develops  
19   policies and procedures.

20           Q.    A manual worker?

21           A.    Work group.

22           Q.    I'm sorry. Work group. And who's part of  
23   that work group?

24           A.    I don't know everybody on it. I know that  
25   Ms. Pat McClure is the -- chairs that manual work

1       group.

2               Q.    Have you played a role in that group?

3               A.    No.   Other than sometimes reviewing  
4       policies before they are sent out just for comment.

5               Q.    So it's your understanding that a work  
6       group gets together and comes up with proposed  
7       policies; is that a fair statement?

8               A.    Yes.

9               Q.    And then what happens with them?

10              A.    Those policies get sent out for review, and  
11       end up, eventually, after review, it occurs.  Then they  
12       get sent out to finalize them and put them into -- they  
13       go from a draft to a final policy.

14              Q.    And who are they being sent out to for  
15       review?

16              A.    Um, I believe they go out to the --  
17       I think -- I know that they go out to the Probation &  
18       Parole administrators' group, which would include  
19       institutional parole services, regional administrators,  
20       field regional administrators.  I don't know who else  
21       is on that distribution.

22              Q.    And who finalizes those policies and  
23       procedures you mentioned when they get finalized?

24              A.    I think it's finalized -- the final  
25       procedures are sent, I think the manual work group

1 chairman finalizes those. And I believe, it's my  
2 understanding, that the chairman signs after as the  
3 last -- to finalize them.

4 Q. Just to be clear, you mean the chairman of  
5 the Board of Probation & Parole?

6 A. Yes.

7 Q. I'm going to show you what we've marked as  
8 Exhibit 5 for purposes of this deposition.

9 You'll note that this is a multipage  
10 document that begins with the title Table of Content.

11 Would you please take a look at this  
12 document.

13 (Deposition Exhibit No. 5 was marked for  
14 identification.)

15 BY MS. QUINN:

16 Q. Does this look familiar to you?

17 A. Yes. This is our table of contents for our  
18 Probation & Parole procedural manual.

19 Q. And you'll notice there are Bates stamps on  
20 the bottom indicating that these were materials we  
21 received from the Attorney General's Office.

22 Do you see there the Bates numbers 264  
23 through 272?

24 A. Yes.

25 Q. And you'll also note on the first page, it

1 says last updated 7-31 of 2017?

2 **A. Yes.**

3 Q. Is it your understanding that the policies  
4 and procedures manual that you just referenced earlier  
5 was last updated July 31, 2017?

6 **A. That would be the day that one of these**  
7 **policies in this manual was updated, I believe.**

8 Q. And I didn't mean to be confusing.

9 Are you aware of any subsequent updates?  
10 Are you aware of any additional changes to the policies  
11 and procedures manual since 7-31 of 2017?

12 **A. I believe there's probably been some**  
13 **updates since this time. We update quite regularly.**

14 Q. But you can't draw to mind what subsequent  
15 updates have been?

16 **A. What specific policy was changed, no.**

17 Q. So we would ask then for any, you know --  
18 not right now -- but any subsequent updates that have  
19 been referenced, updates to this table of contents and  
20 the manual.

21 So looking at this Exhibit No. 5, can you  
22 tell us where it references juvenile life without  
23 parole cases or Senate Bill 590 cases.

24 **A. There are no specific juvenile life without**  
25 **policies. The policies that institutional parole**

1       officers would be using are those that would be related  
2       to parole consideration hearings.

3               Q.     So the regular parole consideration hearing  
4       policies in this book are the same, then, as that are  
5       applied to the juvenile life without parole matters?

6               A.     That, with an additional prehearing  
7       worksheet that is used.

8               Q.     And the worksheet has not been adopted as a  
9       policy in the manual, correct?

10              A.     I don't -- it is not part of the  
11       appendices.

12              Q.     And you've mentioned maybe there was some  
13       subsequent updates since July of 2017.

14                     Do you recollect there being any updates to  
15       the policy manual as to appendices?

16              A.     That, I don't know.

17              Q.     But you're in charge of juvenile life  
18       without parole hearings, correct?

19              A.     I don't know if there have been any updates  
20       that were published.

21              Q.     Wouldn't it be part of your job to know  
22       what the policies are with juvenile life without parole  
23       cases?

24              A.     Is it part of -- I don't believe there are  
25       any, but I can't confirm that.

1 Q. I'm going to show you what's been marked as  
2 Exhibit 6 for purposes of this deposition.

3 (Deposition Exhibit No. 6 was marked for  
4 identification.)

5 BY MS. QUINN:

6 Q. This is also a multipage document with  
7 Attorney General's Bates-stamped numbers 273 through  
8 280. Same as your copy, Mr. Mueller.

9 A. What are the numbers? 273 to 280? That's  
10 the document I have.

11 Q. Take a look at this and tell me if it's  
12 familiar to you.

13 A. Yeah. This is a procedure on parole  
14 decision-making.

15 Q. And anything in here that speaks to  
16 juvenile life without parole matters or Senate Bill  
17 590?

18 A. There's nothing specific that I can find.

19 Q. To your mind, your knowledge, is this a  
20 complete set of the materials relating to parole  
21 hearings?

22 We were provided these documents; is there  
23 anything missing from this set of policies and  
24 procedures from the manual as they relate to parole  
25 hearings?



1           A.    It does not include the setting of  
2   eligibility, which is P6-3.1.

3                   P6-3.2, which is eligible and restrictive  
4   cases.

5                   P6-3.3, appearance of delegates and victims  
6   and clients.

7                   P6-4.1, prehearing report.

8                   Some of the additional ones will not  
9   specifically go to the juvenile life withouts, but more  
10   in the parole process in general.

11           Q.    Can I ask, were you part of the document  
12   production that resulted in us receiving these  
13   materials?

14           A.    Was I part of that production?

15           Q.    Yeah.

16           A.    I did not produce policies and procedures.  
17   My -- my -- I know what the production  
18   was, but I didn't review everything that went out.

19           Q.    We would just ask for those additional  
20   policies that were not turned over in the original  
21   production.

22                   If I was a member of the public and I  
23   wanted to access these materials, how would I do that?

24           A.    Our policies and procedures are -- you just  
25   have to request them. We -- they're not -- I mean, you

1 can request them from a Sunshine.

2 Our policies and procedures are not, for  
3 the most part, are not non-public information. You  
4 just have to request them, I believe.

5 Q. But they're not available online currently;  
6 yes?

7 A. They are not available online to the  
8 public, no.

9 Q. You have to make a Sunshine request to  
10 access the policies and procedures?

11 A. That, or, I mean, I don't know if it has to  
12 be a formal Sunshine request or not.

13 If I had somebody call in and say what --  
14 you know, how do I do this? And they said do you have  
15 policy on that, I probably wouldn't make them go get a  
16 Sunshine request. I would try to work through the  
17 policy. And if they wanted a copy of it I would  
18 contact Pam Rogers to see if she would send them a  
19 copy.

20 Q. Who's Pam Rogers?

21 A. She's the administrative assistant to the  
22 chairman. She's -- she acts -- she's not really the  
23 chairman's -- a custodian of records, but she works for  
24 the chairman. So that's why these policies would come  
25 through her.

1           Q.    What if you're an offender and you'd like  
2           to have an entire set of the policies and procedures,  
3           how would that happen?

4           **A.    That, I don't know.**

5           Q.    Are you aware that offenders are not  
6           allowed to have policies and procedures?

7           **A.    That, I don't know.**

8           Q.    What about the Blue Book?

9           **A.    Blue Book is a document that we send out to**  
10          **all offenders. It's published online for anybody to**  
11          **review. And it is rules and regulations related to the**  
12          **governing of parole or conditional release, I believe,**  
13          **is what it's called.**

14          Q.    And when you say "rules and regulations,"  
15          do you -- what is your understanding of a rule or  
16          regulation? Is it different from a policy or  
17          procedure?

18          **A.    It's a -- can you give me that one again?**

19          Q.    Sure. Is the policy and procedure manual  
20          the same thing as the rules and regulations you've just  
21          spoken about?

22          **A.    The rules and regulations were developed to**  
23          **assist offenders in understanding the parole hearing**  
24          **process. So it's going to have information related to,**  
25          **you know, the setting of hearings. Ineligibility. You**

1 know, cases -- some of them being ineligible.

2 It's going to have time-to-serve  
3 guidelines. Salient factor score information.

4 It's -- but it was a document that was  
5 developed to assist offenders, family members,  
6 something that you could hand them to provide them  
7 information related to parole release.

8 Q. And this is what you mean by rules and  
9 regulations? They're developed to help offenders?

10 A. That's what you asked, what the document is  
11 called. That is what the document is called.

12 Q. The rules and regulations?

13 A. Yeah.

14 Q. And I don't mean to confuse you, so is the  
15 Blue Book the same thing as the rules and regulations  
16 that control all of parole practices?

17 A. There's -- there's administrative rules  
18 that are also involved. And there's policies and  
19 procedures that the Blue Book, again, is just developed  
20 to kind of simplify some of that stuff so an offender  
21 can have, or family member, or an outside public --  
22 whether it's prosecutor or anybody -- can have a better  
23 view as to how we -- ready for a parole consideration  
24 hearing, and the factors that are -- some of the  
25 factors that are involved.

1           Q.    Which of the two policies and procedures or  
2   rules and regs is the controlling law?  Which one is  
3   more -- has more weight or authority?

4           A.    You mean the rules and regulations in the  
5   Blue Book?  Or the regulations by Secretary of State's  
6   office?  Or our policies?

7           Q.    It sounds like you're talking about three  
8   sets of materials?

9           A.    Well, there are administrative rules that  
10  are second to laws.

11                   Then we have our policies and procedures.

12                   And then we have -- the Blue Book is there  
13  to try to explain that, how those are applied.

14           Q.    So the Blue Book's a summary, and it is not  
15  intended to be the law?

16           A.    It's not the law, no.

17                   MR. SPILLANE:  I'm going to break in now,  
18  because I don't want to mislead the court, or the  
19  people, to be giving answers to not knowing that are  
20  not accurate.

21                   It is my understanding that the Blue Book  
22  is incorporated into the Code of State Regulations.  
23  And there are state regulations dealing with parole  
24  specifically set out.

25                   MS. QUINN:  It's not referenced.

1                   MR. SPILLANE: It is referenced. I don't  
2 want him to say something that he didn't know and will  
3 mislead somebody. If you want me to stop, I will.

4                   MS. QUINN: If you don't mind, It is my  
5 record. I'm not done with the examination of this  
6 witness. You know, but I appreciate your position.

7                   MR. SPILLANE: All right.

8                   (Deposition Exhibit No. 7 was marked for  
9 identification.)

10 BY MS. QUINN:

11                  Q. Could you take a look at this document,  
12 which is Bates-stamped, as provided to us by the  
13 Attorney General's Office.

14                   Does this document look familiar to you?

15                  **A. Yes. These are our regulations.**

16                  Q. And what about the email on the cover of  
17 these regulations; is that familiar to you?

18                  **A. Looks like it was a distribution of the**  
19 **final draft.**

20                  Q. And having reviewed this, is your memory  
21 refreshed in any way about the statute of the Blue Book  
22 currently, whether it is part of the rules and  
23 regulations or it is not?

24                  **A. It is established -- it is referenced in**  
25 **the state regs.**

1                   So is it a -- so, you know, referencing it  
2                   in the state regs would make it a part of the state  
3                   regulations, I guess, is what you're saying.

4                   Q.    So I'm asking if that's your position, as  
5                   the person in charge of juvenile life without parole  
6                   hearings, that the Blue Book is now part of the regs?

7                   A.    Repeat that question.

8                   Q.    What's your understanding currently of the  
9                   Blue Book?

10                   Is it just a guide for offenders or is it  
11                   part of the rules and regs?

12                   A.    It comes as part of the rules and regs as  
13                   it is referenced.

14                   Q.    And so was it provided for public comment  
15                   along with the rules, as far as you're aware?

16                   A.    I think all -- that, I'm not aware of. I  
17                   couldn't tell you one way or the other. Generally  
18                   anything that involves the rules and regulations is  
19                   provided for public comment.

20                   Q.    What about appendices to those materials?  
21                   Should those be submitted for public comment?

22                   MR. SPILLANE: I'll object that's a legal  
23                   question, and there's case law on that, and he has no  
24                   idea.

25                   MS. QUINN: I didn't hear an answer.

1                   MR. SPILLANE: Answer if you know the  
2 answer.

3                   THE WITNESS: I do not know.

4 BY MS. QUINN:

5               Q. Were you familiar with this modification of  
6 the rules and regulations when it took place?

7               **A. Which modification is that?**

8               **Can you outline?**

9               Q. The document I provided to you apparently  
10 reflects a series of amendments that took place at the  
11 same time. We can go one by one through them if you  
12 like.

13              **A. No, that's fine.**

14              Q. If you'd look at page 1458. And you see in  
15 bold, a medical parole cannot be granted --

16              **A. I was aware of that.**

17              Q. And what role did you play in having this  
18 language added to the rules and regs?

19              **A. I did not play a role in that. But I know**  
20 **that that was part of the medical parole process,**  
21 **because of the statutory requirements required to serve**  
22 **certain percentages, either 558.019, or other parole**  
23 **restrictive cases.**

24              Q. And what about on page 1459 where the term  
25 "representative" has been struck and the word



1 "delegate" put in its place.

2 Did you play any role in that?

3 **A. I did not play a role in that.**

4 Q. And then in this entire document is there  
5 any reference to juvenile life without parole?

6 **A. I don't believe there is. 'Cause we would**  
7 **hear any -- we would hear juvenile life withouts for**  
8 **parole consideration are given the same opportunities**  
9 **as we would any other offender, but taking into**  
10 **consideration of the additional factors.**

11 Q. I'm going to switch gears slightly and just  
12 want to make sure all the exhibits get to the court  
13 reporter. The ones with the stickers.

14 I want to talk to you about parole board  
15 meetings.

16 The parole board meets quarterly; is that  
17 right?

18 **A. In what capacity?**

19 Q. There's some kind of quarterly meeting  
20 involving the parole; is that --

21 **A. The parole board generally meets monthly**  
22 **too. That's the general meeting schedule.**

23 Q. There are meetings -- I'm sorry -- minutes  
24 that are created, distributed for review in draft form,  
25 and then finalized that were provided to us in the

1 document production.

2 Do you know what those are referring to?

3 A. Those are minutes that reference the -- the  
4 meeting that's for the board meeting minutes, for the  
5 board meeting.

6 Q. So that's a monthly meeting, not a  
7 quarterly meeting?

8 A. Well, it's usually monthly. Some months,  
9 due to scheduling issues for parole consideration  
10 hearings, that they cannot get one in for the month.  
11 'Cause sometimes there's just not enough days in the  
12 month, so they may get those items that may get pushed  
13 to the following month.

14 Q. And what happens at those meetings?

15 A. There's review of prior -- prior meetings  
16 to finalize them. You know, to finalize draft  
17 meetings.

18 There's some votes related to how the board  
19 will proceed with different issues. Those meetings --  
20 there are times in those meetings that there's  
21 discussions of, you know, requested changes in policies  
22 and procedures.

23 Some of those meetings there is as part of  
24 the meeting, guests will attend providing -- some of  
25 them are providing training at those meetings.

1 Q. All right. Maybe I misunderstood.

2 So these monthly meetings that generally  
3 take place, some months are skipped, is that where  
4 decisions are made on particular parole cases?

5 A. No. They could be though. Because there  
6 could be a split. That after -- after -- in a closed  
7 meeting, afterwards they may bring in, talk about a  
8 case that they can't -- they can't decide on.

9 So there could be six board members.  
10 now, you could have a 3-3 split, where they need to  
11 finalize that decision to get that offender a decision.

12 So there may be occasions where they will  
13 have some case review, but generally that's not the  
14 case.

15 Q. And you've been present for those instances  
16 where there's been a case review like that?

17 A. No. Those are not open to the analyst.

18 Q. So --

19 A. It's a complete -- it's just the board  
20 members.

21 Q. I'm sorry. I misunderstood. I think you  
22 said a closed meeting where a decision cannot be  
23 reached?

24 A. Yes.

25 Q. So they'll bring it to the more open

1 meeting.

2 A. No. There's their open meeting. And  
3 sometimes they may have a case they want to discuss,  
4 and that is the board members only.

5 Q. I see. Do they -- is that executive  
6 session? Something like that?

7 A. I'm not sure what they call it.

8 Q. So who generally attends the monthly open  
9 meetings of the board?

10 A. Analysts.

11 The parole board members.

12 Operations manager, when we had a board  
13 operations manager.

14 There may be an institutional parole  
15 regional administrator at times.

16 That's primarily it.

17 Q. In your various roles in MDOC, how many  
18 years would you say you've been attending those  
19 meetings?

20 A. Probably since -- I believe I probably  
21 attended some of those as a unit supervisor, so since  
22 '98, possibly.

23 Q. So since 1998?

24 A. Since I came to Central Office. At one  
25 point I started attending those, I believe, even as a

1       **unit supervisor.**

2               Q.   And those meetings generally have a written  
3       agenda in advance?

4               **A.   Yes.**

5               Q.   Have you been in charge of putting together  
6       that written agenda?

7               **A.   No.**

8               Q.   Who does that?

9               **A.   That's put together by the administrative**  
10       **assistant to the chair.**

11              Q.   I wanna switch gears a little bit and take  
12       us back.

13              **A.   As far as -- probably to clarify that**  
14       **though -- I've not put together the agenda. There have**  
15       **been agenda items that an analyst or myself have asked**  
16       **to be placed on the board.**

17              Q.   Can you tell us what some of those items  
18       were?

19              **A.   Um, I've requested that Ms. Gould be placed**  
20       **on the agenda for one of her programs that we have in**  
21       **one of our prisons, St. Louis University.**

22                       I did that, to get a school over there, so  
23       she could explain the program to the board.

24              Q.   Okay. Who's Ms. Gould?

25              **A.   Mary Gould. She works for St. Louis**

1       **University. I think she's a professor.**

2                   **There's a program that we have through**  
3       **St. Louis University that provides a college education**  
4       **to incarcerated offenders.**

5           Q.    I see.

6                   And have you ever requested for anything  
7       related to juvenile life without parole matters to be  
8       put onto the agenda?

9           A.    I don't recall putting that on the agenda.

10          Q.    Have you been present for any conversations  
11       during those meetings where juvenile life without  
12       parole matters have taken place?

13          A.    There's been some brief discussion, I  
14       believe, by Ms. Dills, as far as the requirements. And  
15       I think she sent out an email to the board.

16          Q.    Okay. We'll talk a little bit more about  
17       Ms. Dills and presentations at the meetings, but let me  
18       make sure -- I understand the shift in her role.

19                   She previously was the director of  
20       operations? Maybe I'm saying it wrong.

21          A.    Ms. Barton had that position and it was  
22       board operations manager. At some point that position,  
23       duties did not change, but changed in name only, to  
24       board operations director, or director of board  
25       operations, whichever it was.

1           Q.    Okay.  And Ms. Dills has now been removed  
2   from that role; yes?

3           A.    She has been moved to field services.

4           Q.    And why is that?

5           A.    I think that -- I'm not -- I don't have the  
6   knowledge to understand exactly why it was.  That was a  
7   decision made, like any other decision -- it was a  
8   decision made by the chairman of the board.

9                   And there was a change in chairmans, and I  
10   don't know if it was philosophy or what, but there  
11   was -- that was one position that was moved around.

12          Q.    And so it's your understanding that she did  
13   not get moved until Chairman Jones took over?

14          A.    Yeah.  I know that for a fact.

15          Q.    And how do you know that?

16          A.    Because I assumed her duties from  
17   Chairman Jones.

18          Q.    And has --

19          A.    Supervision duties.

20          Q.    And has Chairman Jones shared with you his  
21   views why Ms. Dills should be moved?

22          A.    He shared some of his views.  I can't read  
23   his mind.

24                   He shared that -- I believe any time you  
25   deal with people, I think a lot of it deals with

1       loyalty. And are you loyal to the person you work for  
2       or the person you used to work for.

3                       That would be my -- that's the feeling that  
4       I've got from Mr. Jones.

5               Q. And your sentence is that he was concerned  
6       about her loyalty?

7               A. Yes. And some of her supervision practices  
8       with some of the analysts. Meaning not practices in  
9       accountability, but more practices in just day-to-day  
10      encounters, and that type of stuff.

11              Q. So can you tell us what you mean by that?  
12      I'm not sure I follow.

13              A. Um, through my own personal experience,  
14      the -- I'm not sure how to say this politely. There  
15      are times when responses from Ms. Dills were not as  
16      kind as it could have been.

17              Q. And did you experience that yourself?

18              A. Yes.

19              Q. And her responses of that were less kind  
20      than maybe they could have been, was that to the public  
21      as well?

22              A. What do you mean "to the public?"

23              Q. So the lack of kindness, was the concern  
24      more internal? She was not engaging with her  
25      colleagues as she ought to be? Or complaints from the



1 outside public?

2 A. No. I think it was more how she was  
3 treating some of the people within the office.

4 Q. And was one of those people Don Ruzicka?

5 A. Not that I'm aware of.

6 Q. Are you aware of Chairman Jones being  
7 troubled by her handling of that situation?

8 A. Am I aware of the troubling --

9 Q. Was Chairman Jones troubled Ms. Dills lack  
10 of loyalty to Mr. Ruzicka?

11 A. I don't think that was -- I don't think  
12 that was the issue.

13 Mr. Jones was not -- when Mr. Ruzicka's  
14 participation and unprofessional behavior of the time  
15 of hearings came to light, Mr. McSwain was chairman at  
16 the time.

17 Q. Right. But were there concerns that she  
18 did not do as she ought to have done with regards to  
19 Mr. Ruzicka?

20 A. That, I'm not a hundred percent aware of.  
21 Whether there was concerns -- whether handling in-house  
22 versus sending it out, or -- I don't know what  
23 Mr. Jones -- Mr. Jones has not said, "I moved her  
24 because she didn't do this regarding an investigation  
25 on Mr. Ruzicka."

1                   It was more about, I think, from what I  
2   understand, is how she was treating some of the staff  
3   in the office, including the analysts and myself.

4                   Q.   And had you reported problems with  
5   Ms. Dills?

6                   A.   Um, did I report problems with Ms. Dills?  
7   Um, I did not share them with -- I don't believe I  
8   shared them with Mr. Jones. I probably shared them  
9   with co-workers, other analysts, because some of the  
10   encounters were less than professional. Some of them  
11   could be kind of rude.

12                  Q.   But you didn't go above your colleagues?  
13   You didn't report up the chain?

14                  A.   No. You just -- I mean, work. Continue to  
15   do business.

16                  Q.   You mentioned, in talking about Ms. Dills,  
17   accountability as an important issue. And we looked  
18   earlier together at the mission statement for the  
19   Department of Probation & Parole.

20                  A.   Yes.

21                  Q.   Accountability is one of the factors set  
22   forth?

23                  A.   Uh-huh.

24                  Q.   What about transparency? Is that one of  
25   the features of the mission of the Department of

1 Probation & Parole?

2 **A. I would have to look at the mission**  
 3 **statement.**

4 Q. So we were talking about accountability.  
 5 This is what triggered this in my mind, that  
 6 transparency is part of being accountable?

7 **A. We strive to create a transparent system of**  
 8 **operation that embraces integrity and accountability.**

9 Q. Yes. So would you say transparency is  
 10 important to accountability?

11 **A. Transparency in this statement, yeah. I**  
 12 **think transparency of operations is important.**

13 Q. But you're aware of complaints that have  
 14 been made about MDOC and the board of parole not having  
 15 sufficient transparency; yes?

16 **A. I have -- I understand those complaints.**  
 17 **As a matter of fact, I believe we had conversations, a**  
 18 **conversation about that a while back. And I think we**  
 19 **are transparent in that our policies and procedures are**  
 20 **available to the public to receive.**

21 Q. Through a Sunshine request; yes?

22 **A. Yes. For sure with a Sunshine request.**

23 Q. So do you feel like the board is  
 24 sufficiently transparent?

25 **A. I believe that, yes, we provide our**

1 policies and procedures on how we -- you know, the  
2 parole process, I believe that is transparent.

3 I know that we do not provide board votes.  
4 I know that we don't provide victims' names, of who's  
5 at hearings, things like that. But I think that there  
6 are -- I think that we are transparent in our system of  
7 operations.

8 Q. Did you and Ms. Dills differ in your views  
9 regarding how transparent the board ought to be?

10 A. As far as?

11 Q. Did she want to be more transparent?

12 A. That, I don't know.

13 Q. You never talked to her about that?

14 A. I never had discussions as far as that,  
15 where she wanted to be more transparent.

16 We've had discussions related to  
17 confidentiality of board votes. And what we believe  
18 would occur if you start releasing those board votes.  
19 Things like that. Just general conversations. It  
20 wasn't anything that was, you know, a meeting to talk  
21 about.

22 Q. And the two of agreed that that information  
23 should not be shared more broadly?

24 A. I think we both agree that if we were to  
25 start releasing votes to the public that it would

1       probably -- given our knowledge of how the system is,  
2       and how we -- these are political appointees -- that  
3       you may see less risk-taking and less of a desire to  
4       release prior to conditional release on some offenses.

5               Q.    It sounds like in your answer there was  
6       some disagreement in positions between you and  
7       Ms. Dills?

8               A.    Um, I really think we're both on the same  
9       page. I think we both believe if you start releasing  
10      board votes, that decisions will -- it would be  
11      detrimental to the offender, because people making  
12      those votes are political appointees, and I think we  
13      both agree on that piece.

14              Q.    And is there anything position-wise in  
15      which you and Ms. Dills differ?

16              A.    You mean on?

17              Q.    Let's start with juvenile life without  
18      parole cases.

19              A.    We had some initial disagreements on  
20      whether or not circumstances of the offense could be  
21      taken into whether that should be ever considered.

22              Q.    Okay. We'll talk about that.

23                     Can I have my document back?

24              A.    Yeah.

25              Q.    So you and Ms. Dills differ in your

1 position regarding whether circumstances of the offense  
2 should be considered in these juvenile life without  
3 parole or Senate Bill 590 cases, correct?

4 A. I think should, can be, can be considered,  
5 is more where we differ.

6 Q. And your position is that it is a factor to  
7 be considered?

8 A. Yes.

9 Q. And her position was, no, it should not be?

10 A. I think it was her belief that they -- that  
11 they should not be. Not due to -- I'm not -- not due  
12 to her philosophy possibly, as much as due to -- I'm  
13 not sure she understood -- I think it's 565.033 -- one  
14 of the statutes -- it talks about juvenile life without  
15 statute references, in addition to those other factors  
16 and circumstances is one of those other factors.

17 So when I'm reading the law, I think that I  
18 believe that circumstances can be considered when  
19 reviewing a juvenile life without.

20 I think Ms. Dills believed that it was more  
21 like the court -- she believed that it was more like  
22 the domestic violence cases, murders, where the court  
23 came in and said you cannot do that. But that's not  
24 the case with these juvenile life withouts at this  
25 point.

1 Q. And Miller vs. Alabama indicated that the  
2 nature of the offense is not an appropriate factor for  
3 youthful offenders, correct?

4 MR. CRANE: Are you testifying to that  
5 fact?

6 MS. QUINN: I said, "correct." I put a  
7 question mark.

8 THE WITNESS: That, I don't know.

9 BY MS. QUINN:

10 Q. You didn't talk with her about that?

11 A. We did not talk specifically about  
12 Miller vs. Alabama.

13 Q. I'm going to show what's marked as Exhibit  
14 No. 8.

15 (Deposition Exhibit No. 8 was marked for  
16 identification.)

17 BY MS. QUINN:

18 Q. So Exhibit No. 8 is analyst group meeting  
19 notes from September 24th, 2012; is that correct?

20 A. What date?

21 Q. September 24th, 2012.

22 A. Yes, ma'am.

23 Q. And can you just -- so we're on the same  
24 page -- explain analyst group meeting, and the board  
25 meetings that we were talking about earlier, what's the

1 difference?

2           A.   Analyst group meetings are meetings that  
3 are generally monthly, but board members can attend it  
4 if they want, but generally it's the analysts. Some  
5 institutional parole supervisors. Sometimes the  
6 institutional parole regional administrator is in  
7 attendance. And it's basically to talk about different  
8 issues that come up throughout the month that may need  
9 some attention or just review.

10           Q.   Okay. And in this set of meeting notes  
11 there's reference to your presentation to the group of  
12 analysts, correct?

13           A.   Yes.

14           Q.   And can you tell us what you presented to  
15 the group?

16           A.   Let me read it. It's been so long I don't  
17 remember sometimes what I write.

18                       This was an initial heads-up to the  
19 analysts group that this decision came down. At the  
20 time, we were not sure how this would affect our  
21 business. It's kind of like -- it was more of a --  
22 just a preliminary notification to the analysts that  
23 this is on the horizon.

24           Q.   And so when you say "this decision," we're  
25 talking about Miller vs. Alabama; is that right?



1           **A.    Yes.**

2           Q.    And so you shared this information,  
3           although you had not fully read the entire decision,  
4           yes?

5           **A.    I believe we -- I probably reviewed a**  
6           **summary.**

7           Q.    And it indicates here that you told the  
8           group about the number of potentially impacted inmates,  
9           84 under the age of 18; is that right?

10          **A.    Yes.  It looks like that's what was**  
11          **written.**

12          Q.    Do you know where you got that information  
13          from?

14          **A.    I do not.  It may have been from**  
15          **Ms. Barton.  I'm unclear as to where I got that from.**  
16          **I would assume there was some data run made at some**  
17          **point to see how many were affected.**

18          Q.    And then the minutes further reflect that  
19          you told the group if they received inquiries, they  
20          should simply tell people that the department will  
21          abide by any court orders issued in any case  
22          involving a person affected by the decision; is that  
23          right?

24          **A.    I think that was what we were told.  That's**  
25          **how we should proceed with these cases, yes.**

1 Q. And who told you that?

2 A. I would imagine that was either legal  
3 counsel gave us something, or that would have come from  
4 Ms. Barton to me.

5 Q. Were you considered the point person for  
6 these matters already?

7 A. No. Not at that point. It would have been  
8 the board operations manager.

9 This would have probably come out because I  
10 probably got something come across on a, you know, some  
11 summary of it or something, and I was simply giving the  
12 analysts' group, this would be an alert that this is on  
13 the horizon. And we didn't -- we weren't sure how to  
14 proceed at that point.

15 Q. And the minutes further reflect that you  
16 told the group, "If the offender believes they're  
17 affected by the decision, they should contact an  
18 attorney for advice and guidance."

19 Is that right?

20 A. Yes. And, yes, that -- because at the  
21 time, we had no -- we did not know exactly how we would  
22 proceed with these cases.

23 So if an offender asks, "I'm a juvenile  
24 life without," we had no -- there was no policies,  
25 there was no mechanisms to get that offender back

1 before the court. Or before, you know, to appeal, or  
2 determine whether -- how to do the petition.

3 It was so early stages that we were -- we  
4 didn't know what advice to give an offender. We were  
5 certainly not going to give legal advice to an  
6 offender.

7 Q. So would it be appropriate for an analyst  
8 IPO to be answering questions about the implication of  
9 the decision to inmates?

10 A. I don't think at that time we would -- we  
11 wouldn't have had enough information on how that  
12 affected us to even make those responses to any  
13 offenders.

14 Q. Is it ever appropriate for an analyst IPO  
15 to answer a question from an offender about the  
16 implication of a decision like Miller?

17 A. Is it ever appropriate? I think that if  
18 you -- it depends on what the question is.

19 What question are you -- I mean, we  
20 notify -- once we got the process, we notified all the  
21 offenders that they could be affected if they were a  
22 juvenile life without. So that is appropriate in my  
23 mind.

24 But to tell somebody, yeah, you need --  
25 yeah, this affects you, and we're going to release you

1 as soon as we get the, you know, a process to do that.  
2 Or we're going to have a hearing as soon as we get a  
3 process to do that. That, to me that would not be  
4 appropriate at this stage because this was so infantile  
5 in its development.

6 Q. Okay. So it would be okay later on, once  
7 there was process in place, for IPOs to directly answer  
8 those questions?

9 A. Yeah. I think if an IPO called, or family  
10 members called, "I think my daughter or son is a  
11 juvenile life without sentence," I think it's -- I  
12 think by review of the sentence that they were  
13 sentenced under, being juvenile life without, and  
14 calculating their age, being prior to coming -- prior  
15 to the age of 18, I think it's appropriate to say, I  
16 believe, you, you know, he needs to contact his IPO to  
17 talk about, you know, having a petition. I think it's  
18 completely appropriate.

19 But when you don't know enough about the  
20 implications of it, I think it's not good, sound advice  
21 to be providing offenders with information that you  
22 don't know how the process will occur. Or how to even  
23 further that process.

24 Q. You mentioned in this 2012 meeting that  
25 they ought to speak with lawyers.

1                   Did you-all provide access to counsel for  
2                   these individuals impacted by Miller?

3                   **A.    No.**

4                   Q.    Have you ever provided access to counsel  
5                   for individuals impacted by Miller?

6                   **A.    Not that I'm aware of.**

7                   Q.    Has any question ever been raised that was  
8                   directed to an attorney so that the attorney could  
9                   answer it for the inmate?

10                  **A.    I'm not sure I understand that question.**

11                  Q.    So has any IPO or analyst shared with you  
12                  conversations they've had with an inmate saying they're  
13                  seeking legal advice, we should have a lawyer speak to  
14                  them?

15                  **A.    I don't recall any conversations where --**  
16                  **of that nature.**

17                  Q.    So it's the IPOs, who've had the contacts  
18                  with the inmates at MDOC, to let them know about  
19                  Senate Bill 590?

20                  **A.    This -- these minutes are distributed, and**  
21                  **so the IPO supervisor gets copies of those minutes.  So**  
22                  **this is some direction as to how to proceed because**  
23                  **this was so early in the development.**

24                  Q.    Okay.  Well, I'll move us forward from  
25                  2012.

1 I'm going to show you what's been marked as  
2 Exhibit No. 9.

3 (Deposition Exhibit No. 9 was marked for  
4 identification.)

5 BY MS. QUINN:

6 Q. This is an email exchange dated January 25,  
7 2016, correct?

8 A. Yes.

9 Q. And can you tell us what this email  
10 exchange is all about?

11 A. Looks like it's a new article regarding  
12 Supreme Court rulings on juvenile life without  
13 sentences.

14 Q. And the email from Kelly Dills indicates  
15 "legal is reviewing at my request."

16 Is that right?

17 A. Yes.

18 Q. And it appears that she's referring to this  
19 article about Miller's retroactivity as decided by  
20 Montgomery; is that right?

21 A. I -- I would assume that her request for  
22 legal was based on this article.

23 Q. And the article was shared by David Owen;  
24 yes?

25 A. Yes.

1 Q. Who is he?

2 A. David Owen, I believe at the time, was  
3 probably our informational -- public information  
4 officer.

5 Q. And this article again relates to  
6 Miller being applied retroactively; is that right?

7 A. Yeah. It references the Montgomery  
8 decision.

9 Q. So between 2012 and 2016, there was no  
10 action taken by the parole board as it awaited word of  
11 whether or not Miller was going to be retroactive;  
12 is that a fair statement?

13 A. Repeat that.

14 Q. For these JL WOP people that you mentioned  
15 in 2012 to the analysts, no action was taken on cases  
16 between 2012 until 2016 until it was decided that  
17 Miller was going to be retroactive; is that right?

18 A. Our first hearings for any juvenile life  
19 without was in 2016, I believe, yes.

20 Q. So between 2012 and 2016, what, if  
21 anything, did MDOC or the parole board do with regard  
22 to the JL WOP guys and gals?

23 A. We did not have any hearings. I don't know  
24 of anything that we did do in that time period. I  
25 can't tell you. I know we did not do hearings at that

1       **point.**

2               Q.    Did you, or anyone else at MDOC,  
3       participate at all in the legislative process relating  
4       to Miller's implementation in Missouri?

5               A.    **There was -- I was not involved in**  
6       **developing that 590. I'm not sure of who was involved**  
7       **in those meetings.**

8                        **(Deposition Exhibit No. 10 was marked for**  
9       **identification.)**

10       BY MS. QUINN:

11              Q.    I'm going to show you what has been marked  
12       as Exhibit No. 10.

13                      Can you please take a look at this set of  
14       email exchanges relating to juvenile life without  
15       parole cases in Senate Bill 590.

16              A.    **Okay.**

17              Q.    Have you seen these before?

18              A.    **I have seen some of them for sure. The**  
19       **May 26, 2016 memo from Chairman McSwain I have seen.**

20              Q.    So from these materials, is it safe to say  
21       that Kelly Dills was providing interpretations of  
22       Senate Bill 590 for the parole board and parole staff?

23              A.    **It appears that Ms. Dills was involved with**  
24       **these emails, yes.**

25              Q.    So in particular, there's a memo dated May



1 26, 2016 from Kelly Dills to Ellis McSwain, Chairman,  
2 and Julie Kempker, state supervisor -- chief state  
3 supervisor?

4 **A. Yes.**

5 Q. Does this look familiar to you?

6 **A. Yes.**

7 Q. And so here she lays out five factors, it  
8 looks like, for consideration, in her mind?

9 **A. Yes. In addition to those under 565.033.**

10 Q. Okay. So she's delineating here the five,  
11 however; yes?

12 **A. Yes. This appears to be how it was written**  
13 **in the statute.**

14 Q. Okay. And was this memo shared more  
15 broadly amongst staffers, if you're aware?

16 **A. I believe -- I believe this was sent out to**  
17 **the analysts.**

18 I would also believe -- it doesn't have  
19 a -- doesn't say who it was sent to other than the  
20 chairman and Ms. Kempker -- but I believe it was --  
21 this was shared with the analysts. Ms. Kempker may  
22 have shared it with the other staff. That, I can't  
23 confirm a hundred percent.

24 Q. And Kelly Dills is not a lawyer, correct?

25 **A. Not that I'm aware of.**

1           Q.    Safe to say the board deferred to  
2   Ms. Dills' leadership authority for implementing  
3   Senate Bill 590?

4           A.    I think it's fair to say that she  
5   was -- she wrote this email and was -- if that's -- so  
6   this was one of the first emails that had gone out to  
7   staff, so it would be fair to say that, yes, she did  
8   present this out to the board chief state supervisor.

9           Q.    So prior to this exhibit, we looked at an  
10   exhibit where Ms. Dills was noting that she sent this  
11   to legal, the article relating to Montgomery; is that  
12   right?

13          A.    Yes.

14          Q.    Are you aware of any board member taking  
15   the initiative to seek guidance on the meaning of  
16   Montgomery?

17          A.    I'm not aware of any board member  
18   specifically doing that.

19          Q.    Are you aware of any board member --

20          A.    I would say that I believe that Ms. Dills  
21   and Mr. McSwain, who was chairman at the time, were  
22   involved in discussions related to this. But I do not  
23   know whether Mr. McSwain contacted an attorney or  
24   talked to our legal counsel directly.

25          Q.    Was it your impression during this time

1       that Ellis McSwain was deferring to Ms. Dills, again,  
2       to take leadership in the implementation of Senate Bill  
3       590?

4               A.    I believe Ms. Dills was intrinsically -- I  
5       believe she was involved in the development of how we  
6       would -- how we would implement Senate Bill 590.  Yes.

7               Q.    Are you aware of the board doing anything  
8       different from what Ms. Dills recommended?

9               A.    Not that I'm aware of at this time.

10              Q.    And to be clear, my question isn't just to  
11       that exhibit.  At all, ever?

12              A.    Um, I think, as I spoke previously, I think  
13       there was a disagreement as to whether circumstances  
14       could be considered when reviewing a juvenile life  
15       without case.  And I think that Ms. Dills believed that  
16       circumstances could not be considered.

17              Q.    And the board disagreed with her in that  
18       respect?

19              A.    Yes.  Based on the statute, and how the  
20       juvenile life without statute referenced the 033  
21       statute that outlines circumstances, they believe, as I  
22       do, that circumstances can be considered.

23                     It's not the only thing to be considered,  
24       obviously, but can be considered as part of the overall  
25       determinations.

1           Q.    So you've spoken to each board member, and  
2           each one has told you what you just said there?  That  
3           here are our reasons why we believe circumstances of  
4           the offense should be considered in these 590 hearings?

5           **A.    Did I talk to each board member**  
6           **individually?  No.**

7           Q.    So what leads you to believe that's their  
8           thinking?

9           **A.    I believe it was discussed at one point,**  
10          **briefly, at a board meeting.  I believe.  That whether**  
11          **or not -- what their belief was.**

12                   Now, what board meeting, the date of that,  
13          I do not know.  I'm not sure if it was a conversation.  
14          It wasn't a board vote that we're going to -- who wants  
15          to vote to do this.  It was more of an explanation of  
16          the statute.

17          Q.    And who explained the statute?

18          **A.    I believe it was probably Mr. Baker.**

19          Q.    Who is that?

20          **A.    Charlie Baker.  An analyst.**

21          Q.    Okay.  I see.  All right.

22                   (Deposition Exhibit No. 11 was marked for  
23          identification.)

24          BY MS. QUINN:

25                   I'm going to show you what's been marked as

1 Exhibit No. 11.

2 And so you have been mentioning various  
3 provisions in your testimony.

4 A. Yes.

5 Q. 558.047. 565.033. Also in this exhibit  
6 you'll see 565.034.

7 Do these look familiar to you?

8 A. Yes.

9 Q. And what are these?

10 A. These are statutes pertaining to offenders  
11 who are under 18 at the time of their offense, for  
12 murder first-degree, that were sentenced to life. To  
13 life or -- it's the product of Senate Bill 590. My  
14 understanding.

15 Q. And it sounded like you took issue with  
16 Ms. Dills not adequately taking into account the ten  
17 factors under 565.033?

18 A. I'm not sure. "Take issues." Explain what  
19 that means.

20 Q. You disagreed with her evaluation, or --

21 A. I disagreed with the specific subsection 1,  
22 No. 2 of 565.033, that indicates nature and current  
23 circumstances of the offense committed by the  
24 defendant.

25 And that that allows consideration as one

1 of the many factors when determining whether or not a  
2 juvenile life without, you know, when a parole date  
3 should be set.

4 Q. And so how are these ten factors, and then  
5 the five factors under 558.047, to be considered or  
6 weighed in your mind?

7 A. Weighed?

8 Q. How do all these factors play into an  
9 evaluation?

10 A. I don't think that we weigh them one over  
11 the other. There's just many factors that are used to  
12 consider when making parole decisions on these cases.  
13 There's no -- we have no system of weighing one over  
14 the other.

15 Q. What is the system that's used to consider  
16 the various factors when a JL WOP -- previously  
17 sentenced JL WOP individual comes before the board?

18 A. What is the system?

19 Q. Yeah.

20 A. We have a parole hearing. Parole  
21 eligibility hearing with them.

22 We have a prehearing report that outlines  
23 the offender.

24 We receive documents from other people  
25 outside that's considered.

1                   We have victims' testimony.

2                   We have prosecutors. All that stuff plays  
3 a role in making a discretionary decision of the board  
4 whether to release or not.

5                   We look at the maturity.

6                   We look at conduct.

7                   We look at has this offender progressed  
8 while he's there. What programs does he do? There's  
9 just a vast array of things that we look at.

10                  We look at how -- we're looking at  
11 childhood. How was he, you know, what was it like at  
12 that point.

13                  A lot of different -- we look at home  
14 plans. Do you have a home plan? Do you have family  
15 support?

16                  There's -- all those things are looked at,  
17 as with any other, we just make sure, these additional  
18 items, that we do take into consideration, and that we  
19 need to make sure that we do consider prior to making a  
20 decision on parole.

21                  Q. So is it your position the board is  
22 investigating the childhood of each one of these  
23 individuals that comes before them?

24                  A. We are not investigating a child. We have  
25 information, you know, in our prehearing report that we

1       **respond to.**

2               Q.   And somebody hasn't gathered that  
3       information, through their attorney or otherwise, that  
4       is not put before the board; is that right?

5               A.   If it's -- if it's not in the prehearing  
6       report, and it's not put together as a packet through  
7       an attorney, or through the offender or family members,  
8       it probably would not.

9               It may not be available with our prehearing  
10      report, but it should include some of that information.  
11      Touch on those items.

12              Q.   What do you mean "touch on them?"

13              A.   Well, we have a prehearing worksheet for  
14      juvenile life withouts that are -- IPO -- institutional  
15      parole officers are using.

16              Q.   Let's talk a little bit more about some of  
17      these documents being used by the IPOs and others.

18                      (Deposition Exhibit No. 12 was marked for  
19      identification.)

20      BY MS. QUINN:

21              Q.   I'll show you Exhibit No. 12.

22                      Take a look and let me know what this  
23      document is.

24              A.   This is an analysis of Senate Bill 590 for  
25      juvenile life without reviews.



1 Q. And you've seen this item before?

2 A. Yes.

3 Q. And this is a memo written by Kelly Dills  
4 to the board, to Ellis McSwain as chairman of the  
5 board, on May 26, 2016; is that right?

6 A. May 26th, 2016, yes.

7 Q. And did you see this memo at that time or  
8 since then?

9 A. This memo came out fairly close -- I would  
10 have seen it around the same time that it was  
11 delivered.

12 Q. And in her memo Ms. Dills indicates that,  
13 "existing procedures and practice, to a degree" --

14 A. Where are you reading that at?

15 Q. Good question. So after the list of five  
16 items.

17 A. "Through existing procedure and practice,  
18 the items above are presented during the parole  
19 consideration process to a degree. The second point  
20 outlined in the statute will be more difficult to  
21 substantiate."

22 Q. And what's your understanding of what  
23 Ms. Dills is conveying there?

24 A. That efforts to determine some of these  
25 issues regarding vocational programming, and education

1     and stuff, are very -- more, I guess, objective,  
2     because we would have information on those.

3             Increased maturity, since the offense  
4     occurred, is somewhat subjective.

5             And subsequent growth, I mean, technically,  
6     if you -- you know, some of these things are very  
7     subjective. Everybody from 18 on, I mean, I've grown  
8     physically since I was 18. And matured physically  
9     since I was 18. So is that what, you know, some of  
10    that stuff is subjective as to what you -- how you  
11    interpret that.

12            And I think some of those are going to be  
13    more difficult to substantiate. We've never taken a  
14    position that No. 2, just reiterate from what -- we've  
15    never taken the position that No. 2 is only, Well, have  
16    you become bigger, and stronger, and age-wise matured,  
17    by aging? That's not what it is.

18            It's more about how -- have you growth --  
19    have you grown, growth, developmentally. Have you  
20    shown growth in your attitudes? And of those type of  
21    things. Those are difficult to quantify. And I think  
22    that's what that meant, is some of these things that  
23    were listed in the statute are difficult to quantify.

24            Q.    And what efforts has the board taken to  
25    quantify them?

1           A.    As far as -- well, we're relying on our  
2   institutional parole officers.

3                    If we have information from, that we had  
4   previously, like, psych evals, things like that?  
5   We -- I would assume we would probably use that  
6   information if it's available.

7                    Information received from outside parties.  
8   We use that.

9           Q.    So let me --

10           A.    Interviewing the offender. A lot of times,  
11   interviewing the offender is one of the best things.  
12   Because they -- a kid is going to talk and present  
13   themselves differently than an 18-year-old or  
14   17-year-old, than at the time of arrest, than a person  
15   who is sitting before you 25-plus years later.

16           Q.    So just to be clear, all of these JL WOP  
17   defendants who have hearings, they haven't had the same  
18   IPO all along, correct?

19           A.    No. They're in different institutions so  
20   they will get different institutional parole officers.

21           Q.    And for many of these folks, the very first  
22   time they ever met the IPO, is for prehearing report  
23   for this JL WOP?

24           A.    Not a hundred percent, but I would assume  
25   that's correct because there -- the -- they were

1       ineligible for parole prior to that. So I would say  
2       they would not have had contact, but I don't know for  
3       certain.

4               Q.     Beyond talking to the offender in this  
5       prehearing interview, what else is the IPO required to  
6       do to prepare for the hearing?

7               A.     Part of that the juvenile life without  
8       worksheet.

9               MR. SPILLANE: You're looking at what's  
10      stamped 126.

11              THE WITNESS: This is something that the  
12      IPO fills out in addition to that to generate the  
13      prehearing report.

14              MR. SPILLANE: I'm sorry. I misspoke.  
15      Bates stamp 23. I read the digit above it.

16      BY MS. QUINN:

17              Q.     So here's what we're gonna do if it's okay.  
18      I have a marked document that I will show to you, but  
19      your point is that there's a worksheet that the IPO  
20      works through; is that correct?

21              A.     Yes. This assists the IPO in obtaining  
22      information required, yes.

23              Q.     And is there writing on that?

24              MR. SPILLANE: The copy I have has my  
25      exhibit label on it.

1 BY MS. QUINN:

2 Q. I don't mean to confuse matters.

3 You reference that the IPO interviews the  
4 offender and there's a worksheet that is used for that  
5 process?

6 A. Yes.

7 Q. We'll return to that subject and this  
8 document shortly and you can give that back to counsel  
9 if you wish.

10 We'll stick with the exhibit that is before  
11 you, Exhibit No. 12.

12 A. Okay.

13 Q. So we talked about Kelly Dills pointing out  
14 some of the challenges of using existing practices and  
15 procedures to satisfy 590.

16 What does she say about risk assessment  
17 tools being used, if anything?

18 And I'll point you to the  
19 second-to-the-last full paragraph starting with the  
20 fifth point.

21 A. "The risk reduction success, using  
22 evaluated tool and corroborated by satisfactory  
23 institutional adjustment participation in  
24 rehabilitative services or efforts coupled with the  
25 supportive community placement plan."

1           Q.    All right.  And so you've indicated earlier  
2   that you've seen this memo before?

3           A.    Yes.

4           Q.    And what validated tool is she referencing?

5           A.    That, I'm unsure if she's talking to the  
6   salient factor score.

7           Q.    You're overseeing all these hearings now;  
8   yes?

9           A.    Am I overseeing hearings?

10          Q.    Yes.

11          A.    I don't oversee the hearings.  I supervise  
12   the analysts who are involved in the hearings.

13          Q.    All right.  So what validated tool is being  
14   used by the analysts, or anyone else, in these  
15   hearings?

16          A.    That, I am unsure of.  Because I  
17   would -- I'm not -- I don't want to speculate.

18          Q.    Okay.  I'm going to show you what's been  
19   marked as Exhibit 13.

20                   (Deposition Exhibit No. 13 was marked for  
21   identification.)

22   BY MS. QUINN:

23          Q.    This is a July 13, 2016 email notifying  
24   people at the parole department that Governor Nixon  
25   signed Senate Bill 590 into law.

1 Does that sound about right?

2 A. Yes.

3 Q. Were you part of this email exchange?

4 A. I don't -- I don't believe I was involved  
5 as a part of this email exchange. From what I can  
6 tell.

7 Q. And, again, it's Kelly Dills and  
8 Ellis McSwain in conversation it appears from this  
9 email, correct?

10 A. The email was from -- looks like it was  
11 sent from Chairman McSwain to Kelly Dills and copied to  
12 Julie Kempker.

13 Q. And then he invites her, Kelly, let's  
14 discuss tomorrow?

15 A. Okay.

16 Q. Were you part of that conversation or any  
17 discussions immediately following Senate Bill 590 being  
18 signed into law?

19 A. I don't remember any specific discussions  
20 with Mr. McSwain or Ms. Dills. I don't remember any  
21 discussions. I believe I was probably notified it was  
22 signed into law at some point.

23 Q. But it doesn't sound like you were in that  
24 inner circle group who are developing responses at that  
25 moment?

1           **A.    Yeah.  I don't believe I was.**

2                   **(Deposition Exhibit No. 14 was marked for**  
3           **identification.)**

4           BY MS. QUINN:

5                   Q.   All right.  I'm going to show you  
6           Exhibit 14.

7                           So here's another email exchange from Ellis  
8           McSwain to Kelly Dills from July 19, 2016; is that  
9           right?

10           **A.    Yes.**

11                   Q.   I don't see your name on this email  
12           exchange anywhere.

13           **A.    No.**

14                   Q.   Have you seen this information before or  
15           this exchange before?

16                   **A.    I don't recall seeing this specific email.**  
17           **No.**

18                   Q.   There is a reference in this on the second  
19           page to "we will schedule all hearings within 90 days  
20           of processing the petition."

21           **A.    Yes.**

22                   Q.   Are you aware of where that 90-day period  
23           came from?

24                   **A.    Appears that the 90 days was to allow time**  
25           **to conduct an investigation as to the elements outlined**



1       in the statute.

2                   Looks like we needed additional time to  
3       schedule a hearing, because of -- these files were not  
4       parole -- did not have parole consideration previously,  
5       so our files would have been very limited as to what  
6       information we would have had.

7           Q.     And she indicates, as you've just said,  
8       that these were not previously parole eligible and will  
9       have no prior file material, and as offenses have been  
10      25 years ago, materials may be difficult to obtain.

11                   Do you see that section?

12           A.     Yes.

13           Q.     What efforts are being made to obtain  
14      materials relating to these cases?

15           A.     I'm not -- I'm not sure I know what  
16      specific efforts are to obtain information. Some  
17      things, offense reports, circumstances of the offense,  
18      we have a process already in place to request those  
19      types of -- that material.

20                   Looks like that there's some access to be  
21      procured through the Attorney General's Office. But as  
22      far as what processes are in place to provide those, I  
23      am not sure.

24           Q.     What's an offense report referring to?

25           A.     Circumstances of the offense. Police

1       report.  Somebody gets arrested, the police write an  
2       offense report or an arrest report.

3               Q.    So in your mind an arrest report is the  
4       same as the circumstances of the offense?

5               A.    We get circumstances for an offense through  
6       an arrest report, and through other documents,  
7       including, like, we would have -- sometimes we have the  
8       complaint, things like that.

9               Q.    Sometimes you don't, correct?

10              A.    You mean as far as at the time?

11              Q.    At the time of the hearing.

12              A.    Generally, we're -- on all these juvenile  
13       life withouts, I believe we would have the offense  
14       reports.

15              Q.    I asked about the complaint.

16              A.    That, I am not sure.

17              Q.    Have you looked in all of the files for the  
18       JL WOP hearings to see what's in there?

19              A.    As far as?

20              Q.    Do you know what's in the file?

21              A.    I know what our files contain.  Now,  
22       whether or not there's a complaint attached in that  
23       file, that, I don't know.

24              Q.    Have you looked in every file?

25              A.    I have not looked in every file to make

1       **sure that every piece of paper has a complaint, no.**

2               Q.    So this Exhibit 14, Ms. Dills indicates to  
3   Chairman McSwain, "And I met last week to piece a plan  
4   together with regard to how we will process petitions  
5   received by offenders since -- prior to August 28, 2016  
6   to life without parole."

7                   Were you part of that meeting to piece  
8   together a plan?

9               A.    I don't remember attending a specific  
10   meeting with Chairman McSwain and Ms. Dills on the  
11   juvenile life withouts.

12                   There may have been circumstances outside  
13   that meeting where Ms. Dills may have asked a question  
14   about what do you think about this, what do you think  
15   about that. But a specific meeting with Chairman  
16   McSwain, I don't remember attending a specific meeting.

17                   (Deposition Exhibit No. 15 was marked for  
18   identification.)

19   BY MS. QUINN:

20               Q.    Okay. I'm going to show you Exhibit 15 at  
21   this point.

22                   This is a July 29, 2016 email with a draft  
23   petition and petition process for JL WOP cases;  
24   is that right?

25               A.    Yes.

1           Q.    And, by the way, during this time -- strike  
2   that.

3                   Were you part of this conversation or  
4   process to create this sample petition?

5           **A.    No.**

6           Q.    But you received this memo or have seen  
7   this memo relating to the IPOs engaging with offenders  
8   and offenders being given notice of their ability to  
9   make the petition?

10          **A.    Yeah.  I believe -- this sample petition is**  
11 **not unfamiliar, so I believe, yes, I have received it.**

12          Q.    I just didn't hear you.

13          **A.    Yes.  The sample petition is familiar, so**  
14 **at some point I did see this.**

15          Q.    And you've not changed that petition since  
16 you stepped into Kelly Dills' role; is that right?

17          **A.    No, there's been no changes to the**  
18 **petition.**

19          Q.    And you've not changed that process for how  
20 notifications and submitting the petition takes place?

21          **A.    No.**

22                   **(Deposition Exhibit No. 16 was marked for**  
23 **identification.)**

24   BY MS. QUINN:

25          Q.    And here's Exhibit 16.  And I'd

1       imagine -- it appears that this is the final petition,  
2       not just a draft, being shared with the board and other  
3       parole officials; is that right?

4               **A.     Yes.**

5               Q.     And have you seen these materials to the  
6       July 29th memo and the final petition attached to this  
7       email stack?

8               **A.     I have.   I believe I have seen this before.**  
9       **And the final petition, yes.**

10              Q.     And again, no changes to that petition have  
11       taken place?

12              **A.     No changes to the petition have taken**  
13       **place.   I mean, obviously Ms. Dills -- I don't believe**  
14       **they're coming in to Ms. Dills.   She's not receiving**  
15       **them since she's in field operations.   So those will**  
16       **now be coming to me.   I would get -- I don't know if**  
17       **she's still getting those are not.**

18              I still -- my role in these juvenile life  
19       withouts has not changed, in that I'm the one -- I get  
20       the file, review, set the hearing, and make sure that  
21       the notice gets out to the offender and to the other  
22       parties involved.

23              Q.     And you were doing that when Kelly Dills  
24       was in her position, too?

25              **A.     Yes.**

1 Q. I mean, you say "get the file."

2 Are we talking about the parole board's  
3 file?

4 A. Yeah. It's a hard copy file, working file  
5 that would be used. Basically at that point there's  
6 very little in it, other than the institutional face  
7 sheet, which would give date of birth.

8 And there would be the sentence and  
9 judgments for sure would be in there, I believe.  
10 Enough to have information to set a hearing.

11 What was the age at the time of the crime.  
12 What has he pled guilty or been found guilty of. And  
13 the face sheet determines the sentence structure.

14 Q. All right. We'll come back to that part of  
15 the process. Let me show you Exhibit 17.

16 (Deposition Exhibit No. 17 was marked for  
17 identification.)

18 BY MS. QUINN:

19 Q. Exhibit 17 appears to be minutes from the  
20 August 1, 2016 parole board meeting, correct?

21 A. Yes.

22 Q. And there appears to be some reference here  
23 to Senate Bill 590's implementation; is that right?

24 A. Yes.

25 Q. And you were present for this meeting?

1           **A.    Yes.**

2           Q.    And here it indicates the petitions will be  
3           sent to Kelly Dills and the board and analysts will  
4           work together to ensure correct time calculation; is  
5           that right?

6           **A.    Yes.**

7           Q.    And so this statement is referring  
8           to -- when it's referring to analysts, it's a reference  
9           to you as being the person who will do the time  
10          calculation?

11          **A.    Yes.   The time calculations, they were all**  
12          **coming to me.   If I had questions on -- if I had**  
13          **questions as to application of consecutive sentences or**  
14          **something like that, just like any other case we**  
15          **would -- there's times we'll go to other analysts and**  
16          **we'll try to make sure that we're all on the same page**  
17          **on calculations.**

18                But I was setting the consideration  
19          hearings, and I was also calculating any -- I would  
20          calculate when he was eligible based on the 25 for the  
21          hearing, and also calculate minimum prison terms that  
22          were established.

23          Q.    And you were the single person responsible  
24          for that analysis on these cases?

25          **A.    Yes.   As far as I'm aware.   Unless I was on**

1       **vacation.**

2               Q.    And you did that without out seeing the  
3       petitions themselves it sounds like?

4               A.    The petition was part of the information  
5       that was received.

6               Q.    I see.

7                        So you said the petitions were going to  
8       Kelly and then they were going from Kelly to you?

9               A.    Well, Kelly would review them, send them  
10       for clerical to make up a file. And once the file was  
11       made up, I would calculate that.

12                       Kelly did some preliminary calculations to  
13       review the petition, that the age was appropriate,  
14       under 18 at the time of the offense, that kind of  
15       thing. But as far as setting the hearing date, I was  
16       responsible for that.

17               Q.    And since Ms. Dills left her role have you  
18       received any petitions?

19               A.    There have been juvenile life withouts that  
20       have come in. And I couldn't tell you if those  
21       petitions are still going to Kelly. I would assume  
22       they probably are not. But she may still be getting  
23       those, and doing her preliminary, and sending them  
24       over. I'd have to get back with you on that.

25                       They still come to me in the same form they



1       always did. The petition came. This is a juvenile  
2       life without. Here's the file. Can you calculate a  
3       hearing date, and give it back to clerical to set the  
4       hearing, send the notice to the offender.

5                       (Deposition Exhibit No. 18 was marked for  
6       identification.)

7       BY MS. QUINN:

8               Q.    Okay. I'm going to show you what's been  
9       marked as Exhibit 18. It's memo dated August 1, 2016,  
10      to the board members, wardens and IPO supervisors, from  
11      Ellis McSwain.

12                    Have you seen this document before?

13               A.    It looks like exactly like the one I just  
14      looked at.

15               Q.    They all start running together,  
16      Mr. Mueller. I can tell you.

17               A.    I would have to look at them to compare  
18      them.

19               Q.    I'm not trying to be tricky about this. It  
20      is possible we have a duplicate attached to an email.

21               A.    And this is an exhibit?

22               Q.    This is 18. I will note that No. 16 is a  
23      memo dated July 29 that is quite similar.

24               A.    Yes. I'm having difficulty. Without doing  
25      a line-by-line comparison. That there's much

1       **difference.**

2               Q.    I'm just asking have you seen this?

3               A.    **I have seen this.**

4               Q.    All right.  So this is August 1st.  This  
5       memo.  And it talks about a thorough investigation to  
6       be completed so that the elements outlined in the  
7       statute can be considered.  That's in the  
8       second-to-the-last paragraph on the first page.

9               A.    **Yes.**

10              Q.    And were you privy to what that  
11       investigation was supposed to be at the time, August 1,  
12       2016?  Is there any further information or instructions  
13       about what that thorough investigation was to be?

14              A.    **Pertaining to this specific memo, I am not**  
15       **aware of any additional discussions as to what a**  
16       **thorough investigation meant.  I do know there was the**  
17       **prehearing interview questionnaire that was developed.**

18                    **At some point during this whole process,**  
19       **after Senate Bill 590 passed, there was discussions**  
20       **where can we find information of such.  You know, can**  
21       **we get copies of court proceedings?  Because a lot of**  
22       **those issues were involved.**

23                    **I think there was questions whether or not**  
24       **we could get that information from the Attorney**  
25       **General's Office.**

1                   But specific to this, I don't remember any  
2                   specific conversations what that exactly meant. This  
3                   was a developing process based on the law that passed  
4                   that we were trying to figure out how to implement.

5                   Q.     Okay.

6                   MS. QUINN: Let's take a break.

7                   (A break was taken.)

8                   (Deposition Exhibit No. 19 was marked for  
9                   identification.)

10                  MS. QUINN: Back on the record.

11                  BY MS. QUINN:

12                  Q.     I'm going to show you, Mr. Mueller, after  
13                  our break, Exhibit 19. And it appears to be a memo,  
14                  email, from August 8th, 2016, with an attached memo.

15                  Have you seen these materials before?

16                  A.     I don't remember seeing this specific memo.  
17                  But it's simply advising they signed legislation of  
18                  590.

19                  Q.     And so this sample memo that can be posted  
20                  at the different sites to inform defendants of the 590  
21                  hearings, were you part of the creation of this  
22                  document?

23                  A.     No.

24                  (Deposition Exhibit No. 20 was marked for  
25                  identification.)

1 BY MS. QUINN:

2 Q. I'm going to show you Exhibit No. 20, which  
3 is a stack of these memos. They appear to be the final  
4 versions that ultimately got posted at the different  
5 facilities.

6 A. Okay.

7 Q. Do these look familiar to you?

8 A. Only in review from the discovery stuff. I  
9 was not part of developing this or posting. I would  
10 assume they would post them somewhere in the  
11 institution that is accessible to all inmates, but  
12 that's an assumption.

13 Q. Do you know if these are still posted at  
14 the facilities?

15 A. I couldn't tell you that.

16 Q. In your role, are you doing anything to get  
17 word out, to continue to get word out to folks who  
18 might be impacted by Senate Bill 590?

19 A. In my role am I continuing to get word out  
20 to people?

21 Q. Uh-huh.

22 A. No, I have not sent anything out to the  
23 inmate population.

24 Q. Now, we talked earlier about the notices  
25 being provided to inmates who might be impacted by

1 Senate Bill 590 and the IPOs being the individual to  
2 have one-on-one communications with the inmates; is  
3 that right?

4 A. They would be the ones that has direct  
5 access to the inmate, yes.

6 Q. And they're required, in essence, to have a  
7 conversation with that person before they go before the  
8 board; is that right?

9 A. Before they go before the -- before the  
10 petition or before they have a hearing?

11 Q. Before they have a hearing.

12 A. Yes. An institutional parole officer.  
13 Sometimes it's their supervisor, in their absence,  
14 would be the one that do the prehearing report,  
15 interview the offender, that kind of thing.

16 Q. And these IPOs, what is their training and  
17 background?

18 A. They would go through -- institutional  
19 parole officers have their own training block, I  
20 believe, on like conducting interviews, things like  
21 that.

22 But that, I am -- as far as the specific  
23 training, every institutional parole officer goes  
24 through training just as a field parole officer. But  
25 specific to that, I am not -- I could not tell you.

1 Q. And are you aware of whether they were  
2 given any trainings relating to Miller vs. Alabama?

3 A. I'm not aware of that.

4 Q. Are you aware of any scripts or information  
5 beyond the worksheet to gather information, scripts  
6 about sharing information that were given to these IPOs  
7 under 590?

8 A. Can you explain that? I'm not sure what  
9 you mean.

10 Q. So it sounds like the IPO in their job is  
11 supposed to be gathering some information from the  
12 offenders to share with the board relating to Senate  
13 Bill 590 hearings?

14 A. Yes.

15 Q. Is there any guidance, script, information  
16 given to the IPOs about what information should or  
17 should not be shared with the offenders?

18 A. I'm not sure if institutional parole  
19 services gave guidance or what guidance they did give.

20 Q. And the board hasn't told you to ensure  
21 that they are not giving misinformation or wrong  
22 information?

23 A. I think the board has the belief that our  
24 IPOs are acting in good faith and are always giving us  
25 good information and not wrong information.

1           Q.    But nobody has instructed them directly?  
2    You've not instructed them directly:  Here's what you  
3    shouldn't say when you're talking to an offender?

4                   MR. SPILLANE:  I'll object to the compound  
5    question.  Instructed them, or anyone had instructed  
6    them?

7                   MS. QUINN:  That's a fair objection.

8    BY MS. QUINN:

9           Q.    Have you instructed IPOs not to share  
10   certain information with offenders who are seeking 590  
11   hearings?

12           A.    No.

13           Q.    Are you aware of the board instructing the  
14   IPOs in this way?

15           A.    Not that I'm aware of.

16                   (Deposition Exhibit No. 21 was marked for  
17   **identification.**)

18   BY MS. QUINN:

19           Q.    I'm going you show what's been marked as  
20   Exhibit 21 for purposes of this deposition.

21           A.    Okay.

22           Q.    This appears to be an email exchange  
23   involving Ellis McSwain and Kelly Dills and other  
24   parole officials.

25                   On page two it appears there's some

1 instruction to change the way Senate Bill 590 is talked  
2 about?

3 A. Oh, the "Should read?"

4 Q. Yes. Can you take a look at that and tell  
5 me what that means?

6 A. This gets to, page two, the initial  
7 sentence above, "Offenders will have to serve.  
8 Offenders will have to have been under the age of 18  
9 when the offense was committed, and must serve 25 years  
10 of their sentence, before being allowed to petition a  
11 review for -- by the parole board."

12 That was changed to, "offenders will have  
13 to be -- have to have been under the age 18 when the  
14 offense was committed, and must have served 25 years of  
15 the sentence of life without parole before being  
16 allowed to petition a review."

17 What I believe this does is, the "should  
18 read," reflects what the statute advises, where the  
19 sentence, "you'd have to serve 25 years of the sentence  
20 of life without parole," not "their sentence."

21 Because some people can take their sentence  
22 as being their whole aggregate sentence structure.  
23 That you've got, you know, 25 years on the juvenile  
24 life without, plus a consecutive ACA, plus a  
25 consecutive ACA, the 25 years, you can petition in



1     25 years by statute. But this more closely reflects  
2     what the statute is. And both of them are going to be  
3     eligible to hear after they serve 25 years on juvenile  
4     life without.

5             I think it probably goes -- I believe it  
6     goes more to what you do with consecutive sentences  
7     with statutory minimums.

8             Q. And you would agree that Senate Bill 590 is  
9     silent on that score, correct?

10            A. Can you rephrase that?

11            Q. Senate Bill 590 does not talk about what  
12     you've referred to as statutory minimum terms on  
13     non-JL WOP sentences?

14            A. I believe -- I believe the statute, the way  
15     it is written, requires 25 years to be served on that  
16     specific sentence.

17            We apply statutory minimums outside of 590  
18     as -- because that is to be served -- the statute  
19     requires some offenses to serve a period of time prior  
20     to being eligible. Some of them are restricted, some  
21     are non-parolable.

22            So at this point in reviewing this, I don't  
23     think -- I don't know if it addresses specifically  
24     consecutive sentences, but there are other statutes  
25     that require time -- statutory time to be served on.

1 Like an ACA three years, things like that. And do not  
2 account for that in a sentence structure -- because it  
3 did not say "serve 25 years" on the entire sentence  
4 structure, we would -- it's our belief that he still  
5 has statutory mandates of time to serve.

6 Q. And who's the "our" in that sentence?  
7 Who's the "our" that believes that?

8 A. The analysts. We've run -- I am trying to  
9 determine whether -- I think I would assume we probably  
10 have run that through our legal.

11 Q. But you don't know?

12 A. Um, I'm not a hundred percent, no.

13 Q. And you're the one on the front who's doing  
14 the calculations though?

15 A. Yes.

16 (Deposition Exhibit No. 22 was marked for  
17 identification.)

18 BY MS. QUINN:

19 Q. I'm going to show you what's been marked as  
20 Exhibit 22.

21 Have you seen these materials before,  
22 Mr. Mueller?

23 A. Yes. I became aware of this during the  
24 discovery.

25 Q. I think you also earlier made reference to

1 a worksheet; is that right?

2 **A. Yes.**

3 Q. And this contains the worksheet that you  
4 were referencing; is that true?

5 **A. This contains the juvenile life without**  
6 **worksheet that I referenced. I assume. I don't know**  
7 **whether the date -- this date is 8-24-16 -- whether**  
8 **that's been updated or changed. As far as I know, this**  
9 **is still in effect.**

10 MS. QUINN: Let's go off the record a  
11 minute.

12 (An off-the-record discussion was held.)

13 BY MS. QUINN:

14 Q. So this August 24, 2016 juvenile life  
15 without worksheet, is this still used today?

16 **A. I believe so.**

17 Q. And who is it that completes this form?

18 **A. This would be the institutional parole**  
19 **officer who was assigned to conduct the prehearing**  
20 **interview and write the prehearing report.**

21 Q. And have you seen one of these once it's  
22 been completed?

23 **A. I have not.**

24 Q. Do you know if they're completed in ink or  
25 if there's a typed version?

1           A.    I do not.

2           Q.    What happens, if you know, to this form,  
3           once it's completed?

4           A.    I do not know what happens to the form.  I  
5           believe what happens to the information that is gained  
6           through this form is included in the prehearing report  
7           that's provided to the board at the time of the parole  
8           consideration hearing.

9           Q.    So how long before the hearing is this PHR  
10          worksheet completed?

11          A.    That, I could not say.  We set the hearings  
12          out around 90 days, so some time in that 90-day period.

13          Q.    And at the -- towards the end of that  
14          90-day period is when the file is delivered to you?  Or  
15          is it before that?

16                   Strike that.

17                  When in that process do you get the file  
18          delivered to you?

19          A.    The file is delivered to me before this  
20          process.

21          Q.    So you don't see this document?

22          A.    I don't see this document.  I'm in the  
23          initial part of that process.

24                   So I -- the petition comes in.  I believe  
25          it's going in to Kelly.

1                   Kelly provides -- gets the -- checks to  
2                   make sure the qualifications -- checks the date.  
3                   Sends it to me. I recheck the -- recalculate. Make  
4                   sure that what we have is a juvenile life without. And  
5                   I set the -- a parole consideration hearing at that  
6                   point. And then -- and that's 90 days out.

7                   So then, somewhere in that process, my  
8                   understanding, the IPO will do the prehearing report  
9                   using this as a reference guide.

10                  Q.    So who creates the prehearing report?

11                  A.    The IPO.

12                  Q.    When you say "we create," it's not you?  
13                  You don't physically create it?

14                  A.    Not "we" "we." I'm saying "we" as a  
15                  division. But it's the individual parole officer who  
16                  is assigned to do the prehearing report and get the  
17                  report ready for the board.

18                  Q.    So it's your understanding this form then  
19                  doesn't get delivered to the board, instead the report  
20                  of the IPO gets delivered to the board?

21                  A.    Yes. This is a reference guide to get the  
22                  information to -- for the prehearing report.

23                  Q.    And is there any instructions that say, for  
24                  instance, you must include this, and you may not leave  
25                  out, when you turn this over to the board as part of

1 your report?

2 A. The instructions that are on top of the  
3 form should be include in the report. The highlighted  
4 information.

5 So the issues -- items are highlighted to  
6 make sure that the institutional parole officer, when  
7 they're gaining information, that this stuff be  
8 included.

9 Q. And it says "should," not "must," correct?

10 A. Yes. It says "should."

11 Q. Are you aware of any report being bounced  
12 back to an IPO for failing to include certain  
13 information relating to juveniles life without parole?

14 A. I'm not aware of that. I couldn't tell  
15 you, because the report -- if they didn't include this  
16 information, it should be bounced back from the  
17 institutional parole officer's supervisor before it  
18 gets finalized and sent to the board, because the final  
19 product should have these highlighted items.

20 Q. Is there a Senate Bill 590 factors?

21 A. No.

22 Q. Anything along those lines, to suggest,  
23 here are the juvenile life without parole features the  
24 board needs to focus on in those reports?

25 A. I don't believe our hearing reports

1 specifically say these are the five additional items  
2 that have to be considered and here's what we found  
3 out, no.

4 Q. And you mentioned the five factors.

5 So on page 12 of this report, are these the  
6 five factors that you're referencing from  
7 Senate Bill 590?

8 A. I'd have to look at Senate Bill 590 to make  
9 sure.

10 Actually, I'd like to see the statute.  
11 They are not worded identical to the statute, but they  
12 are identified in these items. There's four items  
13 listed and some of them are combined.

14 Q. So the worksheet that is given to the  
15 IPOs don't even use the exact language of Senate  
16 Bill 590; is that what you're saying?

17 A. The worksheet does not outline the  
18 identical verbiage in Senate Bill 590, or more  
19 importantly, the statute.

20 Q. And then it takes those factors listed at  
21 the end of page 12 and asks the IPOs to consider these  
22 things using the seven critical criminogenic needs.

23 Are the seven criminogenic needs a part of  
24 Senate Bill 590?

25 A. No.

1           Q.   And these parentheticals that appear to  
2   limit the actual information, like mental health  
3   medications, diagnosis, IQ, are those things taken from  
4   Senate Bill 590?

5           MS. SPILLANE:  I'm going to object to the  
6   form of the question in that it assumes the  
7   parentheticals limit, as opposed to doing something  
8   else.

9           Subject to that, you may answer, sir.

10          THE WITNESS:  These -- what I believe is  
11   that statute requires these additional items to be  
12   considered.  But there are also other items that we  
13   consider with any parole offender that's going up for a  
14   parole hearing.

15          So some issues -- you asked about the last  
16   statement that you made -- you want to know whether  
17   they were in Senate Bill 590, which ones did you speak  
18   of?

19          Q.   Well, the term "seven critical criminogenic  
20   needs," is that term something derived from Senate Bill  
21   590?

22          **A.   No.**

23          Q.   And then the term "et cetera" is not used  
24   anywhere with these parentheticals to suggest there may  
25   be others; is that right?



1           **A.    Et cetera is not used where?**

2           Q.    At the end of the parenthetical language?

3           **A.    In the statute?**

4           Q.    At the end of page 12 there.   The end of  
5 the form.

6           **A.    It's not.**

7                   When you read the consideration below with  
8 the brief summary of strengths, weaknesses, utilizing  
9 the seven criminogenic needs, associates recreation, they  
10 list those out and then these additional things that  
11 were outlined in Senate Bill 590 are in the statute.

12                   So they're going to be doing a parole  
13 consideration hearing with consideration of what they  
14 would normally do in any parole consideration hearing  
15 and making sure that they address these additional  
16 items that were developed based on Senate Bill 590.

17           Q.    You mentioned this form doesn't go to the  
18 board; yes?

19           **A.    No.   It doesn't go to the board.**

20           Q.    And it also doesn't go to the inmate,  
21 right?

22           **A.    No.   This is a questionnaire used to**  
23 **develop the prehearing report.**

24           Q.    And so it also doesn't get involved with  
25 defense counsel who may be involved in defense of the

1 inmate?

2 **A. Not to my knowledge.**

3 Q. Do you see referenced on the first page in  
4 this email in bold, about midway through, "The first  
5 Petition has been processed and the hearing is  
6 scheduled for November 2016 at ERDCC." And it is  
7 referencing Inmate Houston. Number 155400.

8 **A. Okay.**

9 Q. Were you involved at all in Inmate Houston,  
10 155400 having his hearing set up?

11 **A. I would have to look. I believe I probably**  
12 **set the -- I believe I probably set the hearing.**  
13 **Because I believe I set most of the hearings. To be**  
14 **sure that that was one that I set a parole**  
15 **consideration hearing for, I could not answer**  
16 **definitely. But I would say that I have -- my belief,**  
17 **I probably set all hearings. That would have been my**  
18 **involvement in that case.**

19 Q. Do you have any knowledge of why  
20 Mr. Houston went first?

21 **A. Have no idea.**

22 Q. That name Houston doesn't mean anything to  
23 you?

24 **A. No. I generally don't remember a whole lot**  
25 **of names regarding offenders. But if it came first, it**

1       was probably one that we received.

2               I believe we were putting them -- once we  
3       received them and verified that they were eligible for  
4       a juvenile life without hearing, then they processed  
5       them. But I couldn't tell you if that was the first  
6       one that came in or not.

7               Q.    Are you aware of IPOs making initial  
8       contact with inmates to recommend that they file their  
9       petition?

10              A.    No.

11              Q.    So we've talked about the parole file. We  
12       know it's not in there and that's that worksheet. You  
13       mentioned that a report that's written by the IPO is in  
14       the file.

15              What else is in the file?

16              A.    In the parole consideration file?

17              Q.    Yes.

18              A.    There should be correspondence.

19              Q.    From whom to whom?

20              A.    It could be support correspondence. Could  
21       be a letter from the offender. Could be a letter.

22              There can be information from the  
23       prosecutor's office. From the victims.

24              There would be probably victim advocate  
25       letters in there.

1           Letters that indicate that we have notified  
2 victims based on requirements.

3           There's probably -- there should be  
4 sentence and judgment.

5           There will be an institutional face sheet  
6 that indicates time calculations.

7           There will be an initial board action sheet  
8 with my -- which would likely have my signature because  
9 I was setting the initial hearings.

10           There would be a notice to the offender the  
11 month of the hearing. Another notice when it got  
12 closer to scheduling the actual day of the hearing.

13           They'd get notice of the day of the  
14 hearing.

15           I can't think of anything else. I'm sure  
16 that's not everything.

17           Q. And let me clarify. Of the items you just  
18 named, which items are required must be in every parole  
19 consideration file?

20           A. Every parole consideration file should have  
21 a notice to the offender of the hearing date or the  
22 hearing month.

23           There should be a sentence and judgment.

24           And are we talking at the time of the  
25 hearing or at the time of my setting it?

1 Q. At the time of the hearing.

2 A. The prehearing report will be in there.

3 There will be correspondence that comes in  
4 a lot of times from the offender. From offender's  
5 family. From legal counsel.

6 If there's additional information provided  
7 to the board at that time that would make it to the  
8 file.

9 Q. And that single physical file, who keeps  
10 it?

11 A. That file is kept in our filing cabinets in  
12 our office.

13 Q. And who gets to review it prior to the  
14 hearing?

15 A. The file is pulled prior to the hearing and  
16 it is given to the analyst who will be conducting the  
17 hearing.

18 As far as who reviews it, the analyst can  
19 review that file. I don't know if they do prior to the  
20 hearing or at the hearing.

21 They can review -- I believe a lot  
22 of -- there's so much information a lot of times on  
23 these juvenile life withouts that we review some of  
24 that stuff prior to the hearing.

25 I think your organization put in quite a

1 bit of information, too, on Norman Brown. I believe  
2 that was the case.

3 Mr. Baker, I know that he told me that he  
4 received that and that they had reviewed that prior to  
5 the hearing, I believe. So the board member can review  
6 it.

7 The files are generally kept with the  
8 analyst because they'll be bringing the files to the  
9 hearing.

10 Q. So the board members are not required to  
11 review it before the hearing; is that your  
12 understanding?

13 A. There's not a requirement, no.

14 Q. And are all these materials that are in the  
15 physical file scanned and uploaded to an electronic  
16 system?

17 A. I believe so.

18 Q. And can that electronic system be accessed  
19 by all board members?

20 A. It can be accessed by all board members, by  
21 the hearing panel if they wanted to. It should be in  
22 the hard copy file also. But it can be accessed, yes.

23 Q. And the inmate does not get to see that  
24 file; is that right?

25 A. Our files are -- no. Our files are a

1 closed record. They do not get a copy of the  
2 prehearing report. They don't get a copy of the file  
3 to review prior to the hearing.

4 Q. And attorneys for the inmates are  
5 prohibited from reviewing those files as well; is that  
6 right?

7 A. Yes. They cannot review the file. It's a  
8 closed record.

9 Q. And this initially BAS report that you  
10 mentioned as traveling with the physical file, tell me  
11 what the BAS form is again.

12 A. BAS is a board action sheet. Which one are  
13 you talking about?

14 Q. Are there multiple board action sheets?

15 A. That's a form that we use. There's an  
16 additional form that we attach to the juvenile life  
17 without cases so that we know that the hearing panel  
18 addressed the additional five issues outlined in Senate  
19 Bill 590, and you have a copy of that.

20 Q. And so you have in every single instance  
21 for these JL WOP hearings an additional BAS for those  
22 cases?

23 A. That, I'm not -- I would have to look. I'm  
24 unsure whether or not the first hearing had one of  
25 those are not. That is something that I'm not a

1       **hundred percent on.**

2               Q.     There have been about 23 hearings so far,  
3     yes?

4               A.     There's been more than that. We've  
5     conducted -- we actually held 27.

6               Q.     And you don't know if all 27 specialized  
7     JL WOP board action sheets was attached to the physical  
8     file?

9               A.     No.

10              Q.     And the physical file you already noted is  
11     something that the analyst is in charge of?

12              A.     At the time of the hearing, he's the one  
13     that gets that file prior to the hearing and takes it  
14     with him.

15                     Once the hearing is over with, they do  
16     their initial vote. Then he -- he doesn't keep that  
17     file. It goes from board member to board member to  
18     review and vote on.

19              Q.     Does the prosecutor get to access the  
20     parole boards' file?

21              A.     The prosecutor? No.

22              Q.     What about the victim advocate or victim  
23     services representative?

24              A.     The victim services has access to our  
25     parole file.



1 Q. Why?

2 A. What's that?

3 Q. Why does she have access to it?

4 A. That, I can't -- I just know that she does  
5 have access to it. I'm not sure. I don't think I  
6 could tell you the reasoning why she did or didn't.  
7 She's an employee of the Department of Corrections.

8 Q. And do all employees of the Department of  
9 Corrections have free access to parole files?

10 A. No. But our victim notification is in that  
11 file. So she'd have to have access to that to make  
12 sure the victim was notified. And information in it  
13 comes and goes.

14 Q. What things are there in the file  
15 containing potentially inaccurate information?

16 A. Inaccurate information?

17 Q. Something that's wrong.

18 A. At what point?

19 Q. Any point.

20 A. Well, the prehearing report is signed off  
21 by the institutional parole supervisor. That's the  
22 checks and balances on that report.

23 The analyst, at the time of the hearing,  
24 will review it. And when they're doing hearings  
25 they'll review it and check.

1                   And, for instance, Norman Brown's case,  
2                   initially with Norman Brown's case, there was a -- we  
3                   set the hearing at 25 years, plus three, plus three,  
4                   plus three. That was based on the institutional face  
5                   sheet that was in the file at the time.

6                   Now, after that point, there was some --  
7                   there was an institutional face sheet that since  
8                   structure changed, it was changed from an armed  
9                   criminal action to a -- either robbery first or assault  
10                  first. One that did not have a mandatory percentage of  
11                  time to serve. Our analyst caught that at the time of  
12                  the hearing and changed that minimum prison term. And  
13                  I believe he notified Mr. Brown of that. That was --  
14                  that there was a change on some type of court  
15                  proceeding.

16                 Q.    Safe to say you don't catch all errors,  
17                       correct?

18                 A.    I don't think we catch all errors, no.

19                 Q.    In fact, you had a hearing for an  
20                       18-year-old that was ineligible under Senate Bill 590  
21                       and it wasn't discovered until after the fact; isn't  
22                       that right?

23                 A.    We caught that at the time of the hearing,  
24                       not after the time the board ruled.

25                       (Deposition Exhibit No. 23 was marked for

1       **identification.)**

2       BY MS. QUINN:

3               Q.    I'll show you what's been marked

4       Exhibit 23.

5               This is an email from Mr. Rogers sharing  
6       board meeting minutes from September 19th, 2016.

7               Have you seen these materials before?

8               **A.    I believe I received it.**

9               Q.    And it indicates here that Kelly Dills in  
10       this board meeting talked about elements of  
11       deliberation to be used at the JL WOP proceedings;  
12       is that right?

13              **A.    Yes.**

14              Q.    And it says that, "Kelly Dills advised that  
15       Michelle Kasick and her staff created a worksheet to  
16       explain the elements required for consideration."

17              What is? What are the elements of  
18       deliberation?

19              **A.    They're the five elements outlined from**  
20       **Senate Bill 590. That's what she's referring to.**

21              Q.    How do you know?

22              **A.    For one thing, I believe I was in that**  
23       **meeting when there were discussions of the**  
24       **deliberations.**

25              Q.    Well, this worksheet is not the same

1 worksheet that the IPO is supposed to fill out in the  
2 prehearing situation, right?

3 A. She is referring to the worksheet that  
4 Michelle Kasick and her staff created to explain the  
5 required elements for consideration.

6 And then she is referencing that when  
7 making a decision, those -- although the circumstances  
8 of the offense remain a factor over consideration, the  
9 element related in the offender's age, maturity level,  
10 and adjustment noted in statute should be factored in  
11 the decision.

12 So Ms. Kasick's worksheet relates to  
13 preparation of the prehearing report where the last --  
14 what I just read refers to the elements required in  
15 statute when making a decision to release or not to  
16 release on juveniles life without.

17 Q. This is further instructions about the  
18 worksheet that the IPOs are supposed to be using?

19 A. This is -- I believe this is advising the  
20 board that a worksheet was developed for them to use in  
21 preparation for the prehearing report. But the  
22 instruction to the board was that they needed to  
23 consider the additional elements in the statute when  
24 making their decision.

25 Q. And does it not say that she created a

1 worksheet to explain the elements required for  
2 consideration, meaning for the board?

3 Who's doing the consideration if not the  
4 board?

5 A. They developed a worksheet to explain the  
6 elements required for consideration during  
7 deliberation.

8 This worksheet -- again, this worksheet is  
9 a working document for them to use when they interview  
10 one of these juvenile life withouts. So when they do  
11 the prehearing part, this information is put into the  
12 prehearing report so the board can understand or make  
13 deliberations and consider the additional five factors  
14 that were outlined in Senate Bill 590.

15 Q. So the worksheet for consideration isn't  
16 given to the board?

17 A. No. Again, the worksheet is used as a tool  
18 for them to prepare the prehearing report.

19 (Deposition Exhibit No. 24 was marked for  
20 identification.)

21 BY MS. QUINN:

22 Q. I'm going to share with you Exhibit No. 24.  
23 Would you mind telling me what that document is?

24 A. This is the additional sheet that these  
25 juvenile life without parole cases. It outlines --

1       should include these additional factors that are  
2       outlined the five factors from statute.

3               Q.     So is this the special board action sheet  
4       you were referring to earlier?

5               A.     This is an attachment to the board action  
6       sheet, that when they conduct a juvenile with life  
7       hearing, this is filled out by the hearing panel --  
8       generally I believe it's by the analyst -- as to make  
9       sure that these additional factors were considered at  
10      the time of hearing.

11              Q.     And what is it that the analyst is writing  
12      on here, if you know?

13              A.     I don't know specifics. It's going to be  
14      answers to try to address growth and maturity,  
15      rehabilitation. Things like conduct. Changes in  
16      conduct. And then an assessment as to remains a risk.

17              Q.     And this is -- it's not called a worksheet  
18      by folks at the parole board; this is referred to as a  
19      special board action sheet?

20              A.     I don't know that we have a name for it.  
21      We developed this because we did not want a hearing to  
22      occur without them taking into consideration these  
23      additional five factors so we met our statutory  
24      obligation.

25              Q.     And this is not part of the policies and

1 procedures manual, correct?

2 **A. No.**

3 **(Deposition Exhibit No. 25 was marked for**  
4 **identification.)**

5 BY MS. QUINN:

6 Q. I'm going to share with you Exhibit No. 25.  
7 This is an email from Kelly Dills -- no -- yes -- to  
8 David Owen with a copy to Ellis McSwain.

9 Have you seen this email before?

10 **A. I have not seen this.**

11 Q. Are you familiar with the content of this?  
12 That her office raised concerns about the adequacy of  
13 the process early on in these hearings?

14 **A. Yes, I am aware there was some concern.**  
15 **There was a disagreement between how our process was**  
16 **and how you felt the process should be.**

17 Q. And it seems here Ms. Dills is concerned  
18 about potentially being quoted in the newspaper;  
19 is that right?

20 **A. Looks like that she said, "Let me know in**  
21 **case I get quoted in the Post-Dispatch."**

22 **Yes. I don't know if that was just a**  
23 **facetious statement or it was a concern. I couldn't**  
24 **tell you a level of concern or if it was a concern.**

25 Q. Were there any meetings called relating to

1       our suggested changes in the process?

2               **A.    Not that I'm aware of.**

3               Q.    Any conversations about taking seriously  
4       the recommendations that were made by our office?

5               **A.    There were some -- there were some.  There**  
6       **weren't meetings, but some discussion on how we should**  
7       **conduct our parole consideration hearings.**

8               Q.    And what were those conversations and who  
9       was involved?

10              **A.    The ones I can tell you is what I was**  
11      **involved in.**

12                    There was some discussion -- for instance,  
13      there was a question whether or not victims should have  
14      any participation based on some of your concerns.  And  
15      we discussed that.  I think Kelly had raised that.  And  
16      we're statutorily required to.

17                    As far as discussions on every concern you  
18      had, there was not.

19                    (Deposition Exhibit No. 26 was marked for  
20      **identification.)**

21      BY MS. QUINN:

22               Q.    I'll show you what's been marked  
23      Exhibit No. 26.

24                    This is a December 6th, 2016 email. Again,  
25      with this sample petition for Senate Bill 590 inmates.



1           And the message attached to it indicates  
2           the offender -- if the offender chooses to use another  
3           type of form or format they may do so.

4           Is that your understanding of the policy?

5           **A.    Yes.   We don't -- my understanding is we do**  
6           **not require them to fill out this specific sample form.**

7           Q.    And you are familiar, though, with the form  
8           that we had been submitting on behalf of our clients,  
9           or forms we were submitting to the parole board  
10          invoking their rights at their hearings?

11          **A.    Yeah.   I'm familiar with that form.**

12          Q.    And what, if any consideration, was given  
13          to those forms?

14          **A.    That, I don't know.   I know that no**  
15          **consideration was as far as leaving the victims out of**  
16          **the process because of the statute.   I don't remember**  
17          **what all the other issues were that were on the**  
18          **petition.**

19          Q.    And was it your understanding no changes  
20          were made because the hearings were to be conducted the  
21          same as any other parole hearing?

22          **A.    They were to be conducted as any other**  
23          **parole hearing except we -- except we would**  
24          **specifically -- we would specifically discuss, as far**  
25          **as -- or deliberate with the mind that we need to make**

1       these five additional elements are required by statute  
2       to provide.

3               Q.     What you said was two different things.  
4       Let me clarify.

5                     Was the understanding in every hearing the  
6       factors would be discussed? Or was it that after the  
7       fact they would be deliberated upon?

8               A.     I think the instruction was that  
9       consideration had to be given to these additional  
10      factors.

11              Q.     But they need not be talked about with the  
12      inmate in the hearing?

13              A.     Those items were outlined -- are part of  
14      the prehearing report that they are reviewing. Did we  
15      say -- do we specifically read off, well, No. 1 says  
16      this, what have you done? I'm sure we did not do that.

17              Q.     I'm going to show you what's been marked as  
18      Exhibit 27.

19                     (Deposition Exhibit No. 27 was marked for  
20      identification.)

21      BY MS. QUINN:

22              Q.     This is an email with the board minutes  
23      from the parole board from January 6th, 2017.

24              A.     Yes.

25              Q.     Have you seen these before?

1           **A.    Yes.**

2           Q.    You were present for this meeting?

3           **A.    Yes.**

4           Q.    This set of minutes reiterates the  
5           commitment of the Department of Corrections and board  
6           to conduct the hearings as normal with the additional  
7           criteria; is that right?

8           **A.    Yes.**

9           Q.    And it does not indicate that the  
10          additional criteria needs to be actually discussed in  
11          the hearing?

12          **A.    No.**

13          Q.    And you, in fact, were in contact -- we may  
14          get tricky here -- with the AG's office, and they  
15          advised you to conduct the hearings as normal?

16                   MR. SPILLANE:   Um --

17          BY MS. QUINN:

18          Q.    With the additional criteria outlined in  
19          RSMo 558.047?

20                   MR. SPILLANE:   I'm not going to object.  
21                   Go ahead.

22                   THE WITNESS:   I had a conversation with  
23          Ms. Colburn.  It wasn't -- initial contact with her was  
24          not based on that, I don't believe.  But it just came  
25          up.  I don't know if I brought it up or what.

1                   And that's, you know, just through  
2                   catch-all conversation. She said you guys are fine.  
3                   Conduct -- make sure you address the additional items  
4                   outlined in the statute. Because we were giving  
5                   meaningful parole consideration. It was not as a legal  
6                   counsel as much as Caroline's a friend of mine from our  
7                   prior legal department.

8                   BY MS. QUINN:

9                   Q.    This set of minutes, it also indicates  
10                  Jimmy Wells debriefed with all of you about difference  
11                  in opinion with defense attorney; do you recollect  
12                  that?

13                 A.    I remember some of that. I think it may  
14                  have been one of your-all's cases and how we should  
15                  process one of these hearings. But other than that, I  
16                  don't. I don't remember the specifics.

17                 Q.    I think you've already said this, but let  
18                  me clarify.

19                        There is no written protocol to be followed  
20                  during the course of a Senate Bill 590 hearing, right?

21                 A.    No written protocol as far as policy and  
22                  procedure?

23                 Q.    Any kind of written document that instructs  
24                  the parole board member on the panel to follow certain  
25                  steps during that hearing?

1           **A.    There's no direct protocol that said you**  
2           **have to do this, this and this.**

3           Q.    No script to be followed for JL WOP  
4           hearings in particular?

5           **A.    No.   Other than the analyst and the board**  
6           **members understand that the additional factors outlined**  
7           **in statute must be considered.**

8                    (Deposition Exhibit No. 28 was marked for  
9           **identification.)**

10          BY MS. QUINN:

11           Q.    Okay.   I'll show you what's been marked  
12          Exhibit 28.

13                    This appears to be analyst meeting minutes,  
14          and there's a section on juvenile life without parole.

15           **A.    Yes.**

16           Q.    Can you tell us what that means?   That  
17          section there?

18           **A.    Which sentence?**

19           Q.    Well, the whole thing.

20                    It was asked if there are no guidelines for  
21          the offender; does there need to be a reason marked on  
22          the second sheet of the BAS.   That's one area of  
23          confusion.

24           **A.    If an offender is a normal parole case that**  
25          **is -- has guidelines, it's not a life sentence, not a**

1 sentence over 45 years, a seven-year sentence comes in  
2 for driving while intoxicated, if the board goes above  
3 guidelines, then they will notify a reason why they  
4 went above guidelines.

5 If there's no guidelines to address, then  
6 the reasons for going above guidelines we don't mark  
7 anything on those files.

8 Q. So how did that present itself in the case  
9 of a child offender in the jail in context?

10 A. I'm not sure I understand your question.

11 Q. Well, I'll not sure either. So I'll  
12 withdraw it.

13 Let me ask this. The next paragraph talks  
14 about, "Kelly indicated that the worksheet filled out  
15 during the hearing provides enough reasoning for a  
16 denial of parole."

17 So is that the single-page document that we  
18 referenced earlier as a specialized board action sheet?

19 A. They're referencing that additional sheet  
20 that outlines the five items.

21 Q. So that's a single-page document.

22 This set of minutes also references the  
23 second sheet of the BAS. So the ordinary board action  
24 sheet, is it a multi-page document?

25 A. It's a two-page document. And with the

1 juvenile life withouts, we add a third page with the  
2 five elements outlined in 590.

3 (Deposition Exhibit No. 29 was marked for  
4 identification.)

5 BY MS. QUINN:

6 Q. Okay. I'll show you what's been marked as  
7 Exhibit 29. So this is the two-page board action  
8 sheet?

9 A. Yes.

10 Q. We were just talking about together?

11 A. Yes.

12 Q. Who fills this out and when?

13 A. It depends.

14 At the time of the parole consideration  
15 hearing, it is filled out by the hearing panel.  
16 Whoever's conducting the hearing generally will write  
17 most of the comments.

18 Any of the hearing panel members can put  
19 comments in the hearing panel section comments section.

20 Then they will vote in the -- the board  
21 analyst and the hearing officer box, which is -- that  
22 should be the CAO at that institution, or someone  
23 representing the CAO who's conducting the panel, part  
24 of the hearing panel.

25 Now, the majority.

1 MR. CRANE: Can you tell us what CAO means?

2 THE WITNESS: Chief administrative officer.

3 It's the supervisor at the institution. Generally  
4 going to be the member on the hearing panel.

5 On cases that do not require a majority  
6 board vote and can be finalized with the hearing panel,  
7 then the analyst would make sure the bottom portion of  
8 this is filled out.

9 For those that go to majority board, this  
10 hearing panel may make a recommendation, but in  
11 deliberating or in determining a final decision, that's  
12 going to be reliant on the majority board and all the  
13 board members, it's written out what the recommendation  
14 was from the analyst and the board member or the  
15 analyst and the institutional supervisor. But the  
16 board members are really the only board vote that  
17 counts when doing a majority board decision. And once  
18 that decision is finalized, the final board member will  
19 make sure appropriate boxes are checked.

20 Q. So in the context of the juvenile life  
21 without parole hearings, the comments box, are there  
22 any requirements for certain information to be included  
23 in there?

24 A. No.

25 Q. And is there any requirements for any



1 particular person to write anything there?

2 A. No.

3 Q. And what about the vote of the panel?

4 Is that to be marked on this form at the  
5 conclusion of the hearing?

6 A. Um, yes. At the conclusion of the hearing,  
7 after the hearing they'll deliberate and make a  
8 recommendation. Because they're all majority board  
9 decisions, because they involve death.

10 So they would deliberate and make a  
11 recommendation. And they would also -- there would be  
12 a third page attached with the five items that are  
13 required to be considered under statute.

14 Q. And you noted earlier that it's the analyst  
15 who fills that out?

16 A. I believe it's usually the analyst that  
17 fills that out.

18 Q. But you noted that it's the board members  
19 only whose vote counts in this process?

20 A. It's the board members -- on the majority  
21 board decision, the analyst and institutional parole  
22 supervisor's recommendation does not count to make a  
23 majority board vote.

24 Q. Why is it that these cases are handled as  
25 majority board decisions versus a majority of the

1 panel?

2           **A. It's based on the board's policies related**  
3 **to their case referral policy.**

4           Q. And when you say "policies," that's  
5 something that's in the policies and procedures manual  
6 we looked at earlier? The table of contents?

7           **A. They have a case referral policy that tells**  
8 **what votes require.**

9                   **Certain offenses that are -- involve death,**  
10 **things like that, are required to have majority board**  
11 **vote.**

12                   **And there's other sentences also.**

13           Q. So those are policies that are not at all  
14 included in the policies and procedures manual I could  
15 get if I made a Sunshine request?

16           **A. Case referral policy, I believe we sent**  
17 **that in the prior case. In the prior Sunshine request.**  
18 **So I do not believe that is protected, but that would**  
19 **be a question for Ms. Rogers.**

20           Q. I just mean that it's not been -- has not  
21 gone not through the policy and procedure approval  
22 format like an ordinary policy and procedure in your  
23 manual?

24           **A. No. Any decision by -- any decision by the**  
25 **board or -- can be majority, based on what they -- what**

1 the panel wants to do.

2 You could have a panel decision vote, but  
3 because one of the persons on that panel wants to refer  
4 to the majority board, I believe they can do that per  
5 their case referral policy.

6 This is an agreement with certain cases  
7 that are higher profile. Higher potential, you know,  
8 like cases that are more -- considered more serious --  
9 they go out to the majority board vote.

10 Q. And this form with the recommendation of  
11 the panel, how does it get to the board?

12 A. The form?

13 Q. The board action sheet.

14 A. It stays with the hard file that the board  
15 has, and that gets passed to the next board member in  
16 rotation.

17 Q. And it's the hard copy file that goes  
18 office to office; is that right?

19 A. Yes, ma'am.

20 Q. What about the recordings from the  
21 proceedings?

22 A. The recordings from the proceedings,  
23 they're available. We have them recorded and put into  
24 a database. So if they wanted to listen to them they  
25 could.

1           If they wanted to, I mean, if they wanted  
2   to talk to a board member who was conducting the  
3   hearing or the analyst, they can. If they're seeking  
4   more information.

5           If they want to -- they're needing more  
6   information, they can speak to the hearing panel that's  
7   there and get that information from them.

8           Q. But they're not required to do that?

9           A. No. They're not required to do that.

10          Q. They can just check the box and say no?

11          A. Or yes.

12          Q. And how many yeses have been given in these  
13   JL WOP proceedings?

14          A. 18.2 percent.

15          Q. As to the recordings that they may or may  
16   not access, who does the recording of the proceedings?

17          A. Recordings are generally going to be done  
18   by the analyst. They're in charge of -- they're the  
19   technical experts at the hearings. They're also  
20   involved with -- they record.

21                 The board members have laptops generally.  
22   They can have laptops there at the hearings also, but  
23   the recordings are generally done by the analyst.

24          Q. And you noted the recordings are actually  
25   done on the laptop itself?

1           **A.    Yes.**

2           **Q.    And that's been a change over time.  You**  
3           **used to have a vendor that provided for professional**  
4           **recording in these hearings; is that right?**

5           **A.    At one point in time, it was a professional**  
6           **vendor.  It was not -- he didn't do the recordings.**  
7           **They sold software to -- similar to what the courts**  
8           **were using, FTR, and we used that to record hearings.**  
9           **But at this point we've got the ability to make**  
10          **hearings.  And maintenance -- we were paying ongoing**  
11          **maintenance for software that we didn't really need,**  
12          **because we can keep recordings and put them in a folder**  
13          **ourselves without spending additional tax dollars.**

14          **Q.    And the laptops that are used to record the**  
15          **hearings, what kind of software is used to do that?**

16          **A.    That, I don't know.  I'm not familiar**  
17          **enough with the software.  I know it's got an accessory**  
18          **recorder and we use that.  Some analysts will use the**  
19          **mic that's provided within the laptop.  Some will use**  
20          **external mics.  They both record pretty good quality**  
21          **recordings.**

22          **Q.    And then those recordings are -- that may**  
23          **be reviewed by the board members, where are they saved**  
24          **for subsequent review?**

25          **A.    We have those on an I drive, an internal**

1 drive, that's accessible by the board members,  
2 analysts. I'm not sure who has additional access to  
3 those recordings. It's very limited.

4 And the actual folder is FTR, because we  
5 keep them all together. We just don't have to have  
6 their software to listen to the hearing.

7 Q. Do you know if there's any required period  
8 of time that they are maintained?

9 A. I believe the -- that, I am not -- it was  
10 we kept them forever. Then two years. I'm not a  
11 hundred percent on the hearings. I believe it's one  
12 year. But Ms. Rogers takes care of that, retention of  
13 records.

14 Q. I'll come back to the full board versus the  
15 panel.

16 Within the panel proceedings themselves,  
17 how many delegates are permitted on behalf of the  
18 inmate?

19 A. They can have one delegate.

20 Q. And are you familiar with any policies or  
21 practices relating to where delegates may sit in the  
22 proceedings?

23 A. That, I am not aware there's specific  
24 policy related to that.

25 Q. Where they may look or not look?

1           A.    That, I don't know.

2           Q.    What is the role of the delegate?

3           A.    What is the role of the delegate?

4           Q.    Yes.

5           A.    To assist in the ability to help with  
6 parole consideration release.

7                   A lot of times it is a family member who is  
8 providing verification of home plans.

9                   Sometimes it's an employer.

10                  Sometimes it's an attorney who helps  
11 provide information.

12                  Whether it's a juvenile life without, or  
13 any parole consideration hearing, we have attorneys  
14 come in and assist in presenting information as to why  
15 this person should be considered for release.

16           Q.    What if the delegate thinks information  
17 discussed during the hearing is incorrect?

18                   What can they do?

19           A.    What if the offender --

20           Q.    The delegate, if they hear information that  
21 is incorrect, can they object?

22           A.    I'm not sure that the process of a delegate  
23 is there to object as much as to assist in release  
24 consideration.

25           Q.    So where are you getting that from, that

1       their role is to address release consideration or  
2       planning only?

3               **A.     That's just traditionally been the role of**  
4       **the delegate.**

5               Q.     What about bringing materials in front of  
6       the panel, can the delegate do that?

7               **A.     That -- I'm -- I believe we would accept**  
8       **any information, including through, you know, before**  
9       **the hearing. When people send stuff in to have**  
10       **consideration, we keep that information and make it**  
11       **available.**

12              Q.     What about bringing a pen and paper into  
13       the hearing; can the delegate do that in a regular  
14       parole hearing?

15              **A.     I think there was some concerns about the**  
16       **role of a delegate versus the adversarial role of the**  
17       **attorney. And, yes, they can do that.**

18              Q.     Let me clarify.

19                     In the past during regular parole hearings,  
20       the delegate could bring a pen or paper into the  
21       proceedings; yes?

22              **A.     I don't know. I don't know if that was**  
23       **being allowed or not. But I know that a delegate can**  
24       **bring a pen or pencil in at this point.**

25                     Prior to that, I'm not sure whether they



1        were allowing it or not.

2 I'm not sure they were in all  
3 circumstances, and even allowing victims to bring pen  
4 and paper in. But that I'm not sure about.

5 (Deposition Exhibit No. 30 was marked for  
6 identification.)

7 BY MS. QUINN:

8 Q. Let me show you what's been marked as  
9 Exhibit 30.

10 Is this set of materials familiar to you?

11           A.     Yes.  It's in regards to a hearing on  
12     [REDACTED] [REDACTED].

13 Q. And you're aware that my colleague,  
14 Amy Breihan, who's here today, handled that hearing on  
15 [REDACTED]

16                      A.     Yes.

17 Q. And you know that she was not permitted to  
18 serve as an attorney, but only permitted to serve as a  
19 delegate, like a family member?

20                   A.     Yes.

21 Q. And there was some concerns about

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22 [REDACTED];
```

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23 is that right?
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24           A.     I heard there were concerns, yes.

25 Q. Can you tell us what you heard?

1           A.    That there was concerns that Ms. Breihan  
2   was writing everything down that occurred, and it was a  
3   closed meeting, and can they do that or not do that.

4                   And it was a concern that what we wanted  
5   perceived to be a closed hearing was becoming an open  
6   hearing based on note-taking.

7           Q.    And are you aware of any reactions by  
8   Kelly Evans to that activity on the part of  
9   Ms. Breihan?

10                   MR. CRANE:   Do you mean Kimberly Evans?

11           BY MS. QUINN:

12           Q.    Yes.   Sorry.

13           A.    Are you taking about regarding the  
14   note-taking?   Or contact in the parking lot?

15                   I'm not familiar with Ms. Evans' complaint  
16   regarding one of these juvenile life withouts having  
17   note-taking.

18                   My thought, the issue was, is Ms. Breihan  
19   having contact with a victim in the parking lot before  
20   they were able to leave the facility.

21           Q.    So I'll just draw attention to page 1746,  
22   the last paragraph.   Perhaps you hadn't seen this  
23   before.   It's talking about consistencies about  
24   note-taking.

25                   Attorneys can bring a pen.   Some

1 institutions are allowing attorneys to bring pen and  
2 paper to make notes. In the case of Frazier, he did  
3 not follow the protocol.

4 **A. Yeah. I'm aware that there was -- of this.**  
5 **I'm not sure that Ms. Evans brought this forward.**

6 Q. Were you part of conversations about this  
7 question of whether attorneys should be permitted to  
8 take notes or not in these proceedings?

9 **A. With who?**

10 Q. Anybody.

11 **A. Yes.**

12 Q. And what was discussed?

13 **A. I think we said what was the harm.**

14 Q. Who's "we?"

15 **A. Mr. Baker and I both.**

16 Q. And what about this person here on these  
17 emails, Michelle Kasick, who's she?

18 **A. She's the institutional parole supervisor.**

19 Q. And what has her position been with regard  
20 to attorneys taking notes during hearings?

21 **A. I can't answer that.**

22 Q. Are you familiar with the letter that is in  
23 this packet, and something marked parole hearing  
24 procedures, sent to my office by Anne Precythe on  
25 April 27th, 2017?

1           **A.    Yes.**

2           Q.    What do you know about these materials?

3           **A.    I know this was sent out by Ms. Precythe to**  
4 **you, to your-all's office.**

5           Q.    And these materials indicate that  
6 note-taking is not permitted even for lawyers?

7           **A.    I believe so.**

8           Q.    And, by the way, this parole hearing  
9 procedure document that's part of this packet, have you  
10 seen this before?

11          **A.    This one here?**

12          Q.    Yes.

13          **A.    Yes, I saw it.**

14          Q.    Do you know if that went through the  
15 regular procedure creation and adoption process?

16          **A.    No.**

17          Q.    No, it did not?

18          **A.    It did not.**

19          Q.    There are emails from June 14th, some of  
20 which you are involved in, correct?

21          **A.    Yes.**

22          Q.    And this is started by Brian George,  
23 providing an FYI to you that Ms. Quinn, me, took notes  
24 even after instructed not to?

25          **A.    Yes.**

1           Q.    Can you tell me about this exchange,  
2    please?

3           A.    Well, it was a concern that was sent to me  
4    that you were taking notes during a hearing  
5    without -- when instructed not to, regardless of what  
6    instructions were given. So that led to other  
7    discussions about note-taking.

8                   I think I had one in here. I'm not sure.  
9    I didn't know we were prohibiting note-taking. Because  
10   it was not -- I did not know what the issue would be,  
11   because you could conduct a hearing and go out in the  
12   hallway and write everything that occurred in the  
13   hearing. So that was pretty much the length of  
14   discussion that we had.

15                   And then later, our chairman made contact  
16   with our legal counsel, and said, yeah, you need to.  
17   Why would you not let them? And we allow note-taking.  
18   At this point.

19                   It was a fairly brief -- a fairly brief  
20   period of time that it occurred, where I think people  
21   were concerned that this, you know, adversarial role  
22   that was occurring.

23           Q.    So is it wrong for those people that have  
24   been sentenced to die behind bars, who now have a  
25   chance to be released, to have an adversary on their

1 side?

2 A. No. Not at all. My opinion is it's not  
3 wrong to be able to take notes. I mean, I don't see  
4 the purpose of not allowing notes. And that's been  
5 resolved.

6 Q. And do you think it seemed like an  
7 insignificant period of time to Norman Brown, who's  
8 hearing I was not permitted to take notes during?

9 A. No. I'm not saying it's an insignificant  
10 period of time. In that aspect. But it was resolved  
11 fairly quickly.

12 Q. And, by the way, he emailed you in the  
13 middle of that hearing, didn't he?

14 A. Who?

15 Q. Mr. George.

16 A. Whether he was in the middle of the hearing  
17 or not, I don't even know that I responded.

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 MR. SPILLANE: I'm going to object  
22 and -- all right. Go ahead and answer. I withdraw my  
23 objection.

24 MR. CRANE: I object that the question's  
25 ambiguous. You said "the hearing." You mean this

1 hearing?

2 BY MS. QUINN:

3 Q. No, not this hearing.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 MR. SPILLANE: I'll tell you what, I'm  
8 still going to object, because the judge is going to  
9 review in-camera whether we have to disclose the  
10 un-redacted thing. And she hasn't decided yet. So I'm  
11 going to direct him not to answer. And if she's says  
12 you can have that, then that will be in the un-redacted  
13 report we send you.

14 MS. QUINN: Okay. Strike that. No  
15 problem. We're moving on to Exhibit 32.

16 (Deposition Exhibit No. 32 was marked for  
17 identification.)

18 BY MS. QUINN:

19 Q. These are board meeting minutes from  
20 May 1st, 2016.

21 It appears you were present for this  
22 meeting; is that right?

23 A. Yes.

24 Q. And there's a discussion about an attorney  
25 who was turned away from a hearing because he wasn't on

1 the right list?

2 A. Yes.

3 Q. Is this familiar to you?

4 A. I cannot tell you what offender it was,  
5 but, yes, it was familiar enough to me that I was  
6 advised that at one of our hearings one of the  
7 attorneys wasn't allowed in to participate.

8 And knowing that, that is one of the  
9 reasons why I think I gave -- I ushered one through of  
10 yours, so we wouldn't have that issue again. Because  
11 attorneys have a right to be there as a delegate and  
12 present information to the board.

13 Q. So it's your position that attorneys have a  
14 right to be there, but only as a delegate, right?

15 A. Yes.

16 Q. We can't object to misinformation  
17 presented?

18 A. I think you can provide additional  
19 information to clarify issues.

20 Q. In the middle of the hearing, if there's  
21 wrong information discussed, we're supposed to remain  
22 silent until spoken to?

23 A. I think the delegate generally speaks at  
24 the end of the hearing.

25 Now, whether or not a board member gives



1 latitude to that or not, it's up to the individual  
2 board member that's in control of the hearing.

3 Q. Let's talk about prosecutors. Are they  
4 allowed to speak only at the end of the hearing?

5 A. That, I don't know.

6 Q. Do you know about when they're allowed to  
7 arrive on the day of the hearing?

8 A. When they're allowed?

9 Q. Are they permitted access to the panel  
10 before the hearing begins?

11 A. That, I don't know.

12 Q. Are you aware of any prosecutor being told  
13 they can't take notes?

14 A. That, I don't know either.

15 Q. Or being turned away from a hearing?

16 A. That, I don't know.

17 Q. Well, you would know if it happened; would  
18 you not?

19 A. I have not heard -- I do not know of any  
20 cases where that has occurred.

21 Q. What about victims; what is communicated  
22 with them prior to the hearings?

23 A. They are notified of a date to attend if  
24 they want to attend.

25 As far as what they're told, my

1       understanding is they are told the sentence structure.  
2       On these cases, I would assume -- I don't want to  
3       assume. I don't know.

4               Q.     So Ms. Evans is in charge of being in touch  
5       with the victims; is that right?

6               A.     Yes.

7               Q.     And you've already indicated she has access  
8       to the entire parole file; is that right?

9               A.     Yes.

10              Q.     And she can share with the victims as much  
11       as she likes from that file if she chooses to?

12              A.     That would be a breach in our policies, I  
13       believe.

14              Q.     So if a victim attended a hearing and  
15       indicated she had access to information about a  
16       parole -- inmate's programming, programs he had or had  
17       not completed, would that be a violation of protocol?

18              A.     I don't believe that would be information  
19       we would share. But that's not -- that is something  
20       that would have to be verified through Ms. Evans.

21              Q.     And are the victims limited to speaking  
22       only to a particular topic?

23              A.     I think we follow victim statutes related  
24       to what they can and can't say. And how many can and  
25       can't attend.

1 Q. How many can attend?

2 A. I don't believe statute allows us to limit  
3 the number of victims if they're a victim of a crime.

4 Q. So as many as wish can attend?

5 A. Yes. In these cases, obviously it's not  
6 the victims, it's victims of the family.

7 Q. Noted. It would be the family of the  
8 victim.

9 And the same with police, is that right, as  
10 many as wish to attend can attend?

11 A. I think by statute we're going to require  
12 them to be involved in that case. You can't just -- if  
13 the case occurs out of Cole County, we're not going to  
14 let five people from Boone County to come in and  
15 testify.

16 Q. It sounds like you don't know that for  
17 sure; is that right?

18 A. The law enforcement should have -- be  
19 involved with the case.

20 Q. Is that a policy?

21 A. I believe that's part of statute. I'd have  
22 to pull that and look.

23 (Deposition Exhibit No. 33 was marked for  
24 identification.)

25 BY MS. QUINN:

1           Q.    I'm going to show you Exhibit 33. This is  
2           an email from February 24, 2016, with a memo attached  
3           from Kimberly Evans, whom I keep wanting to call Kelly  
4           Evans.

5           **A.    Okay.**

6           Q.    Have you seen this before?

7           **A.    I don't remember seeing this.**

8           Q.    Is there anything that's written here by  
9           Ms. Evans incorrect in your mind?

10          **A.    I don't have any reason to believe that**  
11          **this is not correct.**

12          Q.    Are you familiar with anything in the law  
13          that would prohibit a defendant from asking to be  
14          forgiven?

15          **A.    I don't know of anything in the law that**  
16          **prohibits that.**

17          Q.    But Ms. Evans has instructed the board to  
18          not permit that to happen?

19          **A.    I know they do not want the defendant to**  
20          **directly respond to the victim due to trauma that has**  
21          **occurred.**

22          Q.    What does it say about the ability of the  
23          offender to ask forgiveness?

24          **A.    "Although offenders may desire forgiveness,**  
25          **it is not always appropriate to ask for it. If the**

1 victim -- it is the victim's right to choose it or not.  
 2 I believe it is the role of the board member to  
 3 interrupt the offender as it is not the purpose of the  
 4 hearing to forgive -- to get forgiveness for the  
 5 offender."

6 Q. Are you familiar with the term "restorative  
 7 justice?"

8 A. Yes.

9 Q. Is restorative justice an evidence-based  
 10 practice?

11 A. It's a -- yes. Trying to make victims  
 12 whole. Yes.

13 Q. Is it your sense that forgiveness is part  
 14 of restorative justice practices?

15 A. It is. But I'm not sure at a hearing is  
 16 the best place, due to the emotions, to do that.

17 If the offender wants to request  
 18 forgiveness, and send a letter, they can do that  
 19 through victim services, I believe.

20 Q. Are there any other processes through the  
 21 parole board to permit for reconciliation?

22 A. Not that I'm aware of.

23 (Deposition Exhibit No. 34 was marked for  
 24 identification.)

25 MR. SPILLANE: Can we take five minutes?

1 (A break was taken.)

2 BY MS. QUINN:

3 Q. So we're looking at Exhibit No. 34. This  
4 is an email sent from Jennifer Zamkus.

5 A. Yes.

6 Q. With an attachment four pages long.  
7 Reflecting a May 2017 parole hearing protocol. And  
8 then interview questions.

9 Have you seen these materials before?

10 A. Yes.

11 Q. And this parole hearing protocol sets out a  
12 script to be followed during parole hearings; does it  
13 not?

14 A. Yes.

15 Q. And it walks through the person running the  
16 hearing introducing the various attendees; is that  
17 right?

18 A. Yes.

19 Q. And it indicates at letter D about a  
20 delegate may be a family member, friend, clergy, or  
21 attorney; is that right?

22 A. Yes.

23 Q. So, again, an attorney is treated no  
24 differently in the hearings as a family member or  
25 friend?

1           **A.    Yes.**

2           Q.    And it again indicates no materials, other  
3    than letters of support, are to be allowed in the  
4    hearing.  And no note-taking is to be conducted?

5           **A.    Yes.**

6           Q.    And when I say "no note-taking," it's by  
7    the delegates, they may not take notes?

8           **A.    Yes.**

9           Q.    And the first question, "determine if the  
10   offender accepts responsibility for his involvement in  
11   the crime;" is that right?

12          **A.    Where do you read that at?**

13          Q.    It's Bates-stamped 1761.  And it's section  
14   2-A.

15               And then it goes on with letters A through  
16   P of, areas to be covered by the parole panel during  
17   the hearing, right?

18          **A.    Yes.**

19          Q.    And none of those refer to Senate Bill 590?

20          **A.    No.**

21          Q.    Or juvenile life without parole?

22          **A.    No.**

23          Q.    Is the word age or maturity mentioned  
24   anywhere in here?

25          **A.    No.**

1           Q.    And the email from board member Zamkus  
2           actually suggests that some of these seem like they're  
3           not even relevant, and maybe could not be gone into  
4           with much depth?

5           A.    Yeah. This is not specific to juvenile  
6           life without. This is any parole consideration  
7           hearing.

8                    I don't believe this was a working document  
9           that they were trying to develop protocol. To my  
10          knowledge, I do not believe that this document became  
11          effective protocol. But I am not a hundred percent on  
12          that. I don't remember it becoming protocol.

13          Q.    Who would know?

14          A.    I'm going to say Ms. Zamkus. From what I  
15          can tell from this, this is still a working document  
16          and asking about getting advice. I can tell you it's  
17          not a working document now, because the "delegates may  
18          not take notes during the hearing" is not board  
19          practice at this point.

20          Q.    But you're not in all of the hearings,  
21          right?

22          A.    What's that?

23          Q.    You don't know if this is or is not being  
24          followed in hearings?

25          A.    I cannot tell you if at every hearing they



1 do not allow note-taking. I know the instruction that  
2 went out to the board and analysts was clear that  
3 resolved this issue.

4 (Deposition Exhibit No. 35 was marked for  
5 identification.)

6 BY MS. QUINN:

7 Q. I'll show you what's been marked as  
8 Exhibit 35. This document relates to video hearings.

9 Now, Senate Bill 590 does not specifically  
10 indicate that video hearings would be permitted before  
11 the parole board; is that right?

12 A. No.

13 Q. And this document talks about video  
14 hearings being potentially problematic, particularly  
15 for those with mental health issues or functioning  
16 disabilities?

17 A. Yes.

18 Q. And is that your belief as well? That a  
19 video hearing could be potentially problematic for  
20 somebody with mental health problems or capacity  
21 issues?

22 A. I think offenders with severe mental health  
23 issues would be better served by an in-person hearing.

24 Q. And what steps are being taken to discern  
25 if inmates with Senate Bill 590 hearings might have

1       mental disabilities or impairments that make video  
2       hearings inappropriate?

3               **A.     Our institutional parole supervisor makes**  
4       **that assessment if an offender would be served better.**

5               Q.     And you're the one that's scheduling and  
6       setting up the hearings, right?

7               **A.     The juvenile life withouts; yes.**

8               Q.     And you don't think it's part of your role  
9       then to determine whether offenders who have video  
10      hearings arranged are capable or participating in such  
11      a proceeding?

12              **A.     I believe at the time I set the hearing up**  
13      **that information is not even available. Because**  
14      **the -- we have institutional parole supervisors making**  
15      **contact with these offenders. Or even during the**  
16      **interview. I mean, those offenders, once they're seen,**  
17      **if they identify an issue that they believe the**  
18      **offender could be better served with an in-person**  
19      **hearing, then they should -- they will contact us and**  
20      **should schedule it for an in-person hearing.**

21                        **(Deposition Exhibit No. 36 was marked for**  
22      **identification.)**

23      BY MS. QUINN:

24              Q.     I'll show you what's been marked as  
25      Exhibit 36.

1           This is a series of emails from December of  
2   2016 relating to Bryan Seddens.

3           Are you familiar with Bryan Seddens' case.

4           **A.   I'm not familiar with this specific case.**

5           Q.   But you were copied on this exchange;  
6   is that right?

7           **A.   Yeah.**

8           Q.   And it indicates that Bryan had already  
9   waived the hearing, in-person hearing, therefore  
10   efforts of his attorney to demand an in-person hearing  
11   on his behalf should not be respected?

12          **A.   Yes.   We would want the offender who**  
13   **requested a video hearing to then say he wants an**  
14   **in-person.**

15          Q.   What if that individual is mentally  
16   retarded?

17          **A.   If he was mentally retarded and identified**  
18   **there was significant issues, I would -- we probably**  
19   **would have set him for an in-person hearing based on**  
20   **that.   I don't know what his demeanor was or is now.**

21          Q.   So are you not familiar with material  
22   submitted, along with the document attached here, that  
23   reflected Mr. Seddens' IQ and intellectual disability?

24          **A.   I'm not sure.   I'm not sure I was aware of**  
25   **this, no.   His IQ or disability.**

1                   (Deposition Exhibit No. 37 was marked for  
2   **identification.)**

3   BY MS. QUINN:

4           Q.    I'll show you Exhibit 37. This appears to  
5   be something called a salient factor score sheet.

6                   Can you tell me what this is? When is it  
7   used? Who uses it?

8           A.    This is a -- looks like it's  
9   Norman Brown's. From what I can tell.

10                   No. Okay. Never mind.

11                   This is -- a salient factor sheet is used  
12   to develop a score, and then apply guidelines to  
13   serve -- to develop parole consideration guidelines.

14                   Now, guidelines are guidelines. They're  
15   not -- guidelines are not required for the board to  
16   follow. They give like offenders positioned  
17   a guideline of release that is established by the  
18   board.

19           Q.    Do the board members ever come to you  
20   seeking advice about how to decide a case?

21           A.    Decide an individual case?

22           Q.    Yeah.

23           A.    I mean, they've never -- I won't say  
24   they've never done it. But generally those -- they  
25   will talk to the analyst there that is attending the

1       **hearing.**

2               Q.    Do they ever ask your input whether to  
3       grant or deny parole?

4               A.    It's -- I mean, it has in the past.  I  
5       mean, there's been times that I've given advice to  
6       board members on whether or not they should.  I  
7       couldn't tell you the names.  But it happens on  
8       occasion.

9                       But generally that's a conversation -- on  
10       whether to release or not -- is occurring with the  
11       hearing panel and the analyst that is performing the  
12       hearing.

13              Q.    How about in the JL WOP proceedings; have  
14       you had input?

15              A.    On whether to release or not?

16              Q.    Yes.

17              A.    No.  Those are better answered by hearing  
18       panels.

19              Q.    And given your role, you can't interpret  
20       with this form means, can you?

21              A.    Given my role?

22              Q.    Yes.

23              A.    Well, he's got an excellent salient factor  
24       score because of the components in this.  An excellent  
25       score would be applied to guidelines, and he -- the

1 guidelines would be early in his parole -- the board's  
2 discretion of parole.

3 Q. Is that really what this form means?

4 A. That's what this form is used for.

5 Q. Okay. So we get that it's supposed to be  
6 used to determine if someone is high-risk, low-risk.  
7 But what do these variables mean? What does the term  
8 value mean?

9 A. Where do you see value?

10 Q. It's in the titles of the columns.

11 A. Mine's cut off. Oh. This is the -- is  
12 generated by the IPO.

13 Q. You can't really take it line through line  
14 and interpret it, correct?

15 A. I could tell you what each of these are  
16 looking at.

17 Substance abuse. That's a -- they're  
18 trying to determine whether or not these issues are  
19 currently a factor of -- to consider as far as  
20 elevating risk or not elevating risk.

21 You have conviction free which is the  
22 second one.

23 Nonviolent. That relates to conduct  
24 violations and whether they're violent.

25 One's education. Major conduct violations.

1       **This is what the IPO used to generate a salient factor**  
2       **score.**

3                   **(Deposition Exhibit No. 38 was marked for**  
4       **identification.)**

5       BY MS. QUINN:

6               Q.    Okay.  I'll show you what's been marked as  
7       Exhibit 38.

8                   This is an email from Kelly Dills to  
9       various parole officials.  And someone named  
10      Tina Crowder.

11                  So this seems to be telling Ms. Crowder  
12      about the salient factor assessment for a family  
13      member.  And it indicates that "the factor measures  
14      different variables than the instrument used for an  
15      initial parole consideration, and is calculated during  
16      the parole revocation process."

17               A.    **Yes.**

18               Q.    So is she wrong?

19               A.    **Is this the salient factor used at the time**  
20      **of the revocation?**

21               Q.    Her message indicates it is not used for an  
22      initial consideration or grant of parole, but only used  
23      during the revocation process.

24               A.    **That is correct.  This is a separate**  
25      **assessment.**

1 Q. So the parole violator salient factor is a  
2 different test or tool than the regular salient factor  
3 assessment?

4 A. Yes.

5 (Deposition Exhibit No. 39 was marked for  
6 identification.)

7 BY MS. QUINN:

8 Q. Okay. I'll show you what's been marked as  
9 Exhibit 39. This is a series of memos with an attached  
10 email.

11 Have you seen these materials before?

12 A. Yes.

13 Q. And so page two of this exhibit indicates  
14 that in June -- June 23, 2015, a majority board  
15 decision is comprised of three consensual votes.

16 What does that mean?

17 A. What that means is a majority board  
18 decision takes three votes that have the same release  
19 date. There's a consensus in release dates.

20 So if you have a hearing panel of five, or  
21 a board -- you have five board members -- then to get a  
22 majority board vote, it would take three of those five  
23 board members to agree.

24 Q. And what is this bit about the same release  
25 date that you just shared?



1           **A.     Where do you see same release date?**

2           Q.     I don't. You said it.

3           **A.     Oh. When they're voting to establish a**  
 4 **parole release date, three board members must agree on**  
 5 **the same release date.**

6           Q.     So if someone says three votes yes, two say  
 7 release in two years, one says release in three years,  
 8 that's not --

9           **A.     That's not a board consensus.**

10          Q.     So that's a denial?

11          **A.     That would be a denial. They all have to**  
 12 **agree to a specific release date.**

13          Q.     And at the time this memo was written, do  
 14 you know how many members were on the parole board?

15          **A.     I do not.**

16          Q.     So then there's a memo from December 7th,  
 17 2015. It indicates that a majority board decision will  
 18 consist of four members in agreement with the  
 19 chairman's vote reserved for purposes of resolving  
 20 ties.

21                   What does that mean?

22          **A.     That would mean that if there were seven**  
 23 **board members, and the board was full, and three voted**  
 24 **one way -- whether it was a release or a re-hear -- and**  
 25 **three voted in agreement of a release or re-hear, the**

1       board chairman as being the seventh vote would resolve  
2       the tie.

3               Q.    So does that mean the chair generally does  
4       not vote in all cases?

5               A.    The chairman does not vote in all cases.  
6       No.

7               Q.    Why?

8               A.    Because it depends on when the decision  
9       becomes a majority board decision. In this scenario,  
10      if four members agree to a final release date, it would  
11      be a final decision.

12              Q.    Is this a matter of statute, these changes  
13      taking place?

14              A.    As far as statute, I do not believe statute  
15      requires a -- every board member to vote on every case.

16              Q.    What is a full board case? Does the law --  
17      does the statutory scheme for the parole board dictate  
18      if the board -- if the chair is to vote?

19                    I'll start there.

20              A.    Repeat that question.

21              Q.    Does the law allow for the chairman to sit  
22      out as he sees fit?

23              A.    I believe the law allows the majority board  
24      to vote -- vote to occur without the chairman's vote;  
25      yes.

1           Q.    During these JL WOP hearings, what has been  
2   the voting practice and structure?

3           A.    They've been sent around for a majority  
4   board vote.

5           Q.    Has the chairman sat in or sat out with  
6   those votes?

7           A.    That, I couldn't answer. It depends on  
8   whether there was an agreement before you reach  
9   the -- if there was a consensus to make a majority  
10   board decision. Or whether the board member -- the  
11   chairman could be a split -- could be the one that  
12   makes the final, you know, the -- breaks up the 3-3  
13   tie. Or the 2-2 tie. Whatever.

14          Q.    So during the period that there have been  
15   JL WOP hearings, how many parole members have been in  
16   place?

17          A.    Right now, we have six. For a while we had  
18   five, with the resignation of Mr. Ruzicka. I believe  
19   there was -- at one point we were down to either four  
20   or five.

21                There was one point there was three board  
22   members who were announced by the Governor's office at  
23   the same time. Now, whether one of those board members  
24   was still in an active position, and they just -- I  
25   believe a couple of them were just re-termed, so ...

1           Q.    So during these periods when there was  
2           fewer than a full board, were there memos in place  
3           instructing members how votes were going to be counted  
4           and what constituted a majority?

5           **A.    That's what this memo is for.**

6           Q.    So these are the memos that were in place  
7           at the time of the JL WOP hearings?

8           **A.    I don't know if there was an additional**  
9           **memo to this.  That, I would not know.**

10          Q.    When these votes are taking place with the  
11          full board, you're saying the file travels from office  
12          to office; is that right?

13          **A.    The majority board.  Majority or full**  
14          **board?**

15          Q.    In any case, there's a file?

16          **A.    Uh-huh.**

17          Q.    And it has to go from board member to board  
18          member for a vote?

19          **A.    Yes.**

20          Q.    And in the JL WOP cases, that's what's  
21          taking place?

22          **A.    Yes.**

23          Q.    And is it requiring a majority vote to get  
24          a grant?

25          **A.    It's a majority board decision.  Yes.**

1           Q.    And they have to agree on the exact  
2    outdate?

3           A.    Yes.

4           Q.    And as that file travels from office to  
5    office for the vote, are the board members using any  
6    kind of risk assessment instruments?

7           A.    Not that I'm aware of.  They're using the  
8    prehearing report information received from the  
9    other -- the hearing panel.  But a specific, is a risk  
10   assessment tool being -- following the file going, no,  
11   not that I'm aware of.

12          Q.    And there are no mental health assessments  
13   that MDOC has conducted that the full board or the  
14   panel looks at?

15          A.    Not other than would be included in the  
16   prehearing report.

17          Q.    Is it required in every instance?

18          A.    To have an assessment?

19          Q.    Yeah.

20          A.    Or talk about mental health?

21          Q.    Have an assessment.

22          A.    That, I don't know.

23          Q.    You don't know if the MDOC screens every  
24   single member that comes before the parole board?

25          A.    They do an assessment of mental health, but

1       **if it's a formal assessment, I don't know. That's done**  
2       **through Division of Rehabilitative Services, I believe.**

3           Q.    The board used to have a psychologist; am I  
4       wrong about that?

5           A.    **At one point we did have a psychologist**  
6       **that provided some information.**

7           Q.    And that psychologist is no longer  
8       employed?

9           A.    **No.**

10          Q.    You have no mental health expert working  
11       with the board?

12          A.    **No, we have no mental health expert hired**  
13       **by the board at this time to assess a case.**

14          Q.    What if it was a hearing done by video  
15       before the panel, can the board, as it's voting on this  
16       majority vote, can it access the video?

17          A.    **Video hearings are not recorded. Audio is**  
18       **recorded, but not the video.**

19          Q.    So can what's being said at the prison be  
20       picked up on that audio?

21          A.    **Are you -- our audio tapes will provide**  
22       **information from -- explain that.**

23          Q.    I did Bryan Seddens' hearing. I was across  
24       from the board by way of a video camera. Was the  
25       recording only taking place in Jeff City on a laptop?

1           **A.    It's taking place on a laptop in**  
2           **Jefferson City. And those video recordings do have the**  
3           **offender's statements on them. They're recording that**  
4           **information. They're recording delegates. The**  
5           **microphones will pick up the offender's statements.**

6           Q.    There's no mic on the side of the offender,  
7           however, to specifically pick up what they're saying?

8           **A.    No. We have a TV with a volume. When we**  
9           **record from our office, it picks up what is said on our**  
10          **side, as it picks up what's said on their side.**

11          Q.    There's no mic on the prison side to  
12          specifically pick up -- you're hoping the laptop in  
13          Jeff City picks up what comes across the television  
14          set?

15          **A.    Yes. And I've reviewed some before, and**  
16          **they've -- it's been very audible.**

17          Q.    In terms of writing the decision, who  
18          writes a decision at -- well, what forms are used for  
19          delivering the decision of the board in a JL WOP case?

20          **A.    An inmate notice is sent out to the**  
21          **offender.**

22          Q.    I'm sorry?

23          **A.    An inmate notice is sent out to the**  
24          **offender and delivered by the institutional parole**  
25          **officer.**

1                   (Deposition Exhibit No. 40 was marked for  
2                   **identification.**)

3                   BY MS. QUINN:

4                   Q.     I'll show you Exhibit 40.

5                             Are these documents familiar to you?

6                   A.     **Yes.**

7                   Q.     And looking at the first document, can you  
8                   tell us what that is?

9                   A.     **The first document is the inmate notice to**  
10                   **the offender setting the month and year of the hearing.**

11                   Q.     And here it indicates the month is one, and  
12                   the day is zero, but the year is 2017.

13                             Can you tell us what that means?

14                   A.     **That means that they scheduled this**  
15                   **offender for a hearing some time in January of 2017.**

16                             So then when the -- so then the institution  
17                   will docket the case on a specific date, and do the  
18                   inmate notice to the offender to give a specific date  
19                   as to when the hearing is.

20                   Q.     And then on page two of this document,  
21                   there's a parenthetical, date created, 9-29-16, and  
22                   there's some initials next to that.

23                             Can you tell us what those initials mean?

24                   A.     **Those are my initials from the initial**  
25                   **hearing setting. And DMU is the person who would have**



1 typed the initial inmate notice.

2 Q. And is that like a secretarial assistant?

3 A. She's a senior office assistant. She's a  
4 SOSA. Senior office-something assistant.

5 Q. Okay. And then turn to the second document  
6 in this packet. It looks very similar to the first;  
7 yes?

8 A. Yes. Are you talking about the one dated  
9 11-2 of '16?

10 Q. Yes. What's different about this document?

11 A. This sets the specific date on the -- on  
12 the -- for the offender, for a date where the  
13 offender's going to be at the institution, or we have a  
14 video parole hearing occurring at that institution.

15 Q. So the same form that gives general notice  
16 of the hearing is then used to give the specific date  
17 of the hearing?

18 A. Yes.

19 Q. And page two of this I see the initials  
20 JLB; what does that mean?

21 A. I'm not sure who that is. But generally  
22 should be the person at the institution who docket the  
23 specific day of the hearing.

24 Q. And the last page here is dated  
25 January 30th, 2017.

1                   What is this document?

2                   **A.    This is the inmate notice that's given to**  
3                   **the offender after the decision from the hearing**  
4                   **occurred.**

5                   Q.    So where's the decision part on here?

6                   **A.    No. 3.  "You have been given parole**  
7                   **consideration in a parole hearing 01-03-0217.  You will**  
8                   **be scheduled for a reconsideration hearing on**  
9                   **01-00-2022.**

10                  Q.    And at the bottom, what is the information  
11                  at the bottom in the lined section?

12                  **A.    That would be notification of one of the**  
13                  **reasons -- or the reason of -- that the panel cited as**  
14                  **to deny parole consideration.**

15                  Q.    And to be clear, there's only one single  
16                  reason provided here?  Circumstances surrounding --

17                  **A.    Yes.**

18                  Q.    And on page two, I see some initials.  Who  
19                  is that?

20                  **A.    CTB is Charlie Baker.  Parole analyst.  And**  
21                  **DMU would be the SOSA.**

22                  Q.    And is it usually the same SOSA that does  
23                  the notice that does the decision?

24                  **A.    Not in all cases.  No.**

25                  Q.    Is there anyone else who plays a role in

1 putting this decision form into final form?

2 A. Um, we have Dawn Umfleet. She has OSAs  
3 that work for her that create decision notices for  
4 offenders.

5 Q. Anyone else?

6 A. The one that types this decision is  
7 clerical staff.

8 Q. What do they use to put this form together?

9 A. They use the corresponding board action  
10 sheet.

11 And juvenile life without, you have the  
12 additional factors that were considered. But this  
13 is -- the analyst or board member would check reason  
14 for denial.

15 Q. So on the regular -- the ordinary board  
16 action sheet there's a space to check a reason?

17 A. Yes. Page two of the board action sheet.

18 Q. And that is what the administrative  
19 assistant is trained to look to when typing this up?

20 A. Yes.

21 Q. And does it say anything about reasons for  
22 the duration of the setback?

23 A. No.

24 Q. Does the board action sheet indicate that  
25 sort of information?

1           A.    I can't answer every -- some board members  
2    may make notations on it.  Others may not.

3                   Some may say, "cannot release because of  
4    MPPTT.  Consider in three years or four years."

5                   Others may say nothing.

6                   Some of them are set out for five years.  
7    Some set out for three.  That's at the board's  
8    discretion.

9                   Parole cases is generally setting parole  
10   reconsideration one to five years.

11           Q.    From this form, how is a JL WOP offender in  
12   particular, supposed to figure out what it is they're  
13   supposed to do to be able to be released in the future?

14           A.    On this particular one?

15           Q.    Yeah.  Mr. Roland's form?

16           A.    That, I'm not sure.

17           Q.    So how's Mr. Roland supposed to figure out  
18   what he needs to do to get released?

19           A.    He should be making contact with his  
20   institutional parole officer.  In this particular case,  
21   it looks like reasoning was circumstances of  
22   surrounding the offense.

23           Q.    Right.

24           A.    That doesn't mean that that's -- although  
25   that factor may never change, it doesn't mean that he

1 will always never get released because of those  
2 circumstances.

3 The board may say -- well, they may have  
4 made a thought of, well, let's hear him in five years.  
5 Three to five is statutorily. And they may make  
6 notations and say, consider release, future release, at  
7 next hearing.

8 You know, that individual board member's  
9 filling these out. There's no requirement to tell us  
10 what you're going to do next time. They're termed.  
11 You may have a completely separate or different panel  
12 at a later date. Which may be more favorable or less  
13 favorable, I guess.

14 Q. How's that decision provided to the JL WOP  
15 inmate physically?

16 A. The institutional parole officer delivering  
17 the decision to the offender.

18 Q. Is it also provided to the prosecutor?

19 A. That, I don't know.

20 Q. What about the victim; do you know?

21 A. The victims are notified of decisions.

22 Q. What about delegates?

23 A. After ten days we would release that to a  
24 delegate.

25 Q. Do you mail it to them automatically?

1           **A.    No, not automatically.  No.  If they**  
 2           **contacted the institution they can release it.**

3           Q.    And attorneys are not provided notice  
 4           automatically?

5           **A.    We don't provide automatic notice to the**  
 6           **delegates.**

7           Q.    I also noticed on this decision form, it's  
 8           indicated that "there's no right to appeal this  
 9           decision."

10                   Is that right?

11           **A.    Yes.**

12           Q.    Why is there no right to appeal?

13           **A.    That's because it's -- the majority board**  
 14           **has already reviewed the file and made a majority board**  
 15           **decision.**

16           Q.    And so tell me about how majority board  
 17           decisions preclude inmates from seeking an appeal.

18           **A.    That's part of the board case referral**  
 19           **policy related to the majority board decisions.**

20                   **(Deposition Exhibit No. 41 was marked for**  
 21           **identification.)**

22           BY MS. QUINN:

23           Q.    Okay.  I'll show you what's been marked as  
 24           Exhibit 41.

25                   This is a set of materials relating to one

1 of the Plaintiffs, Mr. McElroy.

2 You'll notice it's a letter from  
3 Husch Blackwell, with the same documents we just talked  
4 about, from Mr. Roland, and attached are various  
5 notices and decision in this case.

6 Were you part of the document production  
7 for these materials to us in this specific file?  
8 Issues?

9 **A. I've never seen this document.**

10 Q. So you don't have any understanding of why  
11 in Mr. Roland's case he only got the forms, but for  
12 Mr. McElroy we got a letter from his lawyer at  
13 Husch Blackwell?

14 **A. I don't know why -- I don't know why that**  
15 **occurred.**

16 Q. And in his case too, there is no  
17 explanation for the duration of the setback?

18 **A. There's no explanation for the duration.**  
19 **There is additional explanation for reason based upon**  
20 **poor institutional conduct.**

21 Q. No. No. Just the duration, why 2021  
22 versus 2020, versus --

23 **A. No. That's a discretionary decision of the**  
24 **board.**

25 Q. What would be considered poor institutional

1 adjustment for a minor?

2 **A. Generally, poor institutional conduct is**  
3 **related to their conduct in the institution.**

4 Q. So is there any difference in the analysis  
5 between those who were incarcerated while children  
6 versus adults when weighing institutional adjustment?

7 MR. CRANE: I'm going to object. That  
8 assumes this offender was incarcerated as a child.

9 BY MS. QUINN:

10 Q. Oh, okay. Let me try to lay a foundation.  
11 You said you don't know Ralph McElroy?

12 **A. No.**

13 Q. Should we go through all the documents to  
14 see that he's on the list of --

15 **A. I understand. He is one of the juveniles.**

16 MR. CRANE: I was saying he was probably  
17 not incarcerated as a child.

18 (Deposition Exhibit No. 42 was marked for  
19 identification.)

20 MS. QUINN: I'll withdraw that question.

21 BY MS. QUINN:

22 Q. I'll show you Exhibit 42.

23 **A. Okay.**

24 Q. So generally, putting aside individual  
25 JL WOP cases, is there any kind of specialized analysis



1       that's supposed to take place when someone's been  
2       incarcerated as a child in the prison system versus an  
3       adult, and looking at their institutional adjustment?

4               MR. SPILLANE: I'm going to object to the  
5       question unless you can define what a child is.

6       BY MS. QUINN:

7               Q.     Anyone under 18 who came into the prison  
8       system.

9               A.     It depends. One of the things they look  
10      for as institutional adjustment is at the time of the  
11      hearing versus time of commitment. How long -- how  
12      many violations are occurring.

13              So an offender that comes in as a young  
14      offender on a short sentence, he doesn't have a whole  
15      lot of time to improve conduct. Because he's probably  
16      going to be released.

17              These juvenile life withouts, one of the  
18      things we look at is what's your conduct at the time of  
19      when you got incarcerated, and what's that conduct  
20      history been up until the hearing.

21              Q.     So is there any training that you're  
22      familiar with provided to the board about normal  
23      adolescent behaviors?

24              A.     No.

25              Q.     And is there any policy or practice to

1 discount misbehaviors in prison while an individual is  
2 a child under the age of 18?

3 **A. No.**

4 Q. So looking now at Exhibit No. 42. This  
5 appears to be a packet of materials related to JL WOP  
6 Sidney Roberts. It's a very long document put together  
7 by attorney Amy Breihan and then the decision forms.

8 **A. Okay.**

9 Q. On his decision forms, starting with the  
10 notice about when his hearing is to take place --

11 **A. Do you have a number?**

12 Q. Page 1990. Towards the end. It's the last  
13 six pages?

14 **A. Okay.**

15 Q. And so the initials for his notice form are  
16 the same as we saw on Roland?

17 **A. Yes. This would have been reviewed when it**  
18 **first came in with the petition.**

19 Q. And then as for the decision, who  
20 participated in the decision? The initials on the last  
21 page?

22 **A. On which page?**

23 Q. The very last page of your packet.

24 **A. Oh. That would be Robin Worder, was the**  
25 **analyst.**

1 Q. And so it can be an analyst and not a board  
2 member who's responsible for this decision?

3 A. No. That's incorrect. The decision notice  
4 is separate from the decision.

5 The board members make the decision -- the  
6 majority board decisions without any vote from the  
7 analyst, or CAO, or the institutional parole  
8 supervisor. This inmate notice is generated to reflect  
9 the decision of the board.

10 Q. I see. Okay. Thank you for that  
11 clarification.

12 And Mr. Roberts parole was denied strictly  
13 on circumstances of the offense?

14 A. Yes. That's the reason given for the  
15 denial. Yes.

16 Q. And no explanation for the duration of the  
17 setback?

18 A. No. But I would note that he didn't get a  
19 five-year setback, he got four. So the reason for that  
20 is a discretionary decision of the board.

21 Q. And everybody had to agree, the majority,  
22 that four was the right number?

23 A. Yes.

24 (Deposition Exhibit No. 43 was marked for  
25 identification.)

1 BY MS. QUINN:

2 Q. I'll show you 43. These are the materials  
3 for Norman Brown. Here again, we've got four sets of  
4 documents. The first page says that Mr. Brown has  
5 three consecutive sentences for ACA to be served;  
6 therefore, he's not eligible for release until 2025?

7 A. Yes.

8 Q. And this is a form that you completed?

9 A. Yes.

10 Q. But that's wrong, correct?

11 A. No. At the time this board action sheet  
12 was completed, and the calculation of the sentence,  
13 this was correct.

14 Q. So he was sentenced at that time for three  
15 consecutive ACAs?

16 A. That's what our institutional face sheet  
17 indicated.

18 It was later changed to a -- the sequence  
19 of that sentence, which was a 30-year sentence, was  
20 changed to robbery-first or assault-first, one of the  
21 two. So at the time this was calculated, which I did,  
22 was based on three consecutive armed criminal actions.

23 At the time of the hearing, a new face  
24 sheet was completed. It was after this was done and  
25 prior to the hearing, it was determined -- and our

1       analyst picked up that the sentence structure had  
2       changed -- and changed the minimum prison term based on  
3       the change in the sentence structure.

4               Q.    Were you also aware that complaints were  
5       being made about the way his sentence was being  
6       calculated?

7               A.    I understand that there was disagreement  
8       amongst some parties about how we calculated  
9       consecutive sentences, yes.

10              Q.    And that's when you went back and looked at  
11       the original form?

12              A.    No.   That was caught at the time of the  
13       hearing.   In general, there was some complaints how  
14       consecutive sentences are determined.   Whether you do  
15       25 or 25 plus statutory minimum of statutory minimums.

16              Q.    So going into this hearing, Norman Brown  
17       was not given accurate information about when he was  
18       going to be eligible for release?

19              A.    No.   Because the initial notice had 7-28 of  
20       2025.

21              Q.    And then 3-3 of '17 was the second notice  
22       providing him with a date for his hearing, and that  
23       date is May 23, '17, right?

24              A.    Second notice was May 23rd of 2017; yes.

25              Q.    And that notice makes no mention whatsoever

1 of his not being eligible for release?

2 **A. No.**

3 Q. And then he gets another notice on  
4 March 15th that changes the date of the hearing,  
5 correct?

6 **A. Yes. To the 24th of May.**

7 Q. And that notice says nothing at all about  
8 his not being eligible for release?

9 **A. No.**

10 Q. And then he received his decision dated  
11 May 30th, 2017; is that right?

12 **A. I don't know if he received it that date.**  
13 **That's the date of this document.**

14 Q. Thank you for the correction.

15 And this form, the initials at the back,  
16 who are these folks?

17 **A. Michael Davis. And one of our clerical**  
18 **support, Risa.**

19 Q. And the only information he has been  
20 provided about the reason for the denial is  
21 circumstances surrounding the present offense?

22 **A. Yes.**

23 Q. There's no mention of ACAs or stacked  
24 sentences, right?

25 **A. Not on this notice. And he's been set for**

1 reconsideration in 2021. In four years. May of 2021.  
2 Which is less than a year prior to his minimum prison  
3 term.

4 Q. How would we know that? Where's that?

5 A. That's not on this notice, no.

6 Q. Seems like something important for the guy  
7 and his lawyer to know about; no?

8 A. What's that?

9 Q. That would be an important bit of  
10 information for the defendant and his lawyer to know?

11 A. To know his minimum prison term, yes.

12 Q. You know that heading into Norman Brown's  
13 hearing our office filed on his behalf, as we have in  
14 other cases, a document asserting his right to various  
15 protections, right?

16 A. I believe so.

17 (Deposition Exhibit No. 44 was marked for  
18 identification.)

19 BY MS. QUINN:

20 Q. I'll show you what's been marked as  
21 Exhibit 44. And this document is one where inquiries  
22 are being made about how to respond to our request for  
23 certain rights for Mr. Brown?

24 A. Yes.

25 Q. And the inquiry was made by Aaron Jarrett,

1 the IPO at Licking; is that right?

2 A. Yes.

3 Q. And your response is that there's no reason  
4 to respond to that request for rights?

5 A. Yes.

6 Q. There's no need to do anything different  
7 for his hearing versus regular parole hearing?

8 A. There's no reason to do anything different  
9 than what we're doing for our regular parole hearing on  
10 a juvenile life without.

11 Q. And you made sure to let him know that  
12 lawyers don't control these processes?

13 A. Yes. I made notice that the attorney can  
14 attend as a delegate. As with any parole hearing. And  
15 present written documents for the board to consider.  
16 Including those below items that are required under  
17 Senate Bill 590.

18 Q. You instructed these five considerations  
19 are the required considerations for Senate Bill 590  
20 JL WOP hearings?

21 A. What I instructed him was these cases are  
22 not to retry a case. But to determine suitability of  
23 release. Release planning identification of needs upon  
24 release, institutional programming, to address risks  
25 needs. And that Senate Bill 590 required us to address



1       **and give consideration to the below five items.**

2               Q.    So these are different from the information  
3       provided in the worksheet that Jarrett is being asked  
4       to follow; no?

5               **A.    It's different?**

6               Q.    Yeah.

7               **A.    I don't believe it's different.**

8               Q.    How long is the worksheet?

9               **A.    Oh, the worksheet's an interview worksheet.**  
10       **I didn't tell Mr. Jarrett that he needed to -- the**  
11       **staff needed to fill out the prehearing worksheet.**  
12       **That's a process that they should be doing on all**  
13       **these.**

14               This was more as generality how to respond  
15       to complaints from your office on conducting juvenile  
16       life without hearings. That's the context of this  
17       message.

18               Q.    One of the things that you pointed out is  
19       supposed to be considered is institutional programming  
20       to address risks and needs?

21               **A.    Yes.**

22               Q.    And so what programming was identified for  
23       Norman Brown to address risks and needs?

24               **A.    I don't know that specific answer.**

25               Q.    What has been identified for any of the

1 JL WOP defendants as programming that would help  
2 address their risks and needs before release?

3 A. I'd have to look at board action sheets to  
4 determine what specific needs were identified, or  
5 prehearing reports on each one.

6 Some offenders are going to be identified  
7 needing substance abuse treatment prior to release.

8 Some will be identified needing anger  
9 management. All kind of things that we can make  
10 attempts to mitigate risk with programming.

11 (Deposition Exhibit No. 45 was marked for  
12 identification.)

13 BY MS. QUINN:

14 Q. This is Exhibit No. 45.

15 So Exhibit 45. This is an email exchange  
16 from May of 2017 relating to inquiries from an attorney  
17 from Starbucks in Seattle.

18 A. Yes.

19 Q. Does this seem familiar to you?

20 A. Yeah, briefly.

21 Q. Some gal with a soft heart from Seattle  
22 caring about our JL WOP guys.

23 And so you have been called upon to deal  
24 with this inquiry; why is that?

25 A. I would imagine I was called upon to do

1       this, like I am from different board members, that  
2       phone calls are made, a lot of times they'll send them  
3       to me.

4                       Why this one came to me, I can't assume  
5       what Ms. Zamkus was thinking, but it was probably  
6       because I would be able to tell them what information  
7       we were looking for and what the requirements of the  
8       law were.

9               Q.     And it appears that you agreed to respond  
10       to this gal directly?

11              A.     Yes.

12              Q.     And did you?

13              A.     I made a call and I never got a call back.  
14       So I don't know.

15              Q.     And the bolded information you have here in  
16       your response to Zamkus, that looks familiar, doesn't  
17       it?

18              A.     Yes.

19              Q.     It's the same cut and pasted bolded  
20       information from the email from Aaron Jarrett, correct?

21              A.     I don't know if it's from Aaron Jarrett or  
22       from -- could have been copied out of the statute.

23              Q.     No, it's word-for-word the language that  
24       you used in your email to Jarrett in Exhibit 44.

25              A.     It may have been. I would have copied and

1       **pasted that from somewhere.**

2               Q.   And you're noting here that this is what  
3       you think the board should quote/unquote look at as a  
4       set of factors?

5               A.   This is what we would normally tell people,  
6       that in addition to what we look for on a normal parole  
7       consideration hearing, that is not a juvenile life  
8       without, that we also look at these factors.

9               Q.   Look at.   What does "look at" mean?

10              A.   Consider when making a decision.   Not look  
11       at, consider.

12                       (Deposition Exhibit No. 46 was marked for  
13       **identification.**)

14       BY MS. QUINN:

15              Q.   I'm showing you what's been marked as  
16       Exhibit 46.   These are various log entry forms  
17       apparently relating to Norman Brown's parole denial and  
18       Mr. Ruzicka's involvement in his parole hearing.

19              A.   Okay.

20              Q.   Have you seen these before?

21              A.   I have never seen these.

22              Q.   Were you aware of complaints being made  
23       about --

24              A.   Mr. Brown?

25              Q.   Yeah.

1           **A.     Yes.**

2           **Q.     Tell me what you know about the complaints**  
3           **being made about Mr. Brown's situation.**

4           **A.     The complaint -- my information from the**  
5           **complaint that we received regarding Mr. Brown -- was**  
6           **based on a phone call from Senator Schupp's office. I**  
7           **think I provided you a document of that. And that was**  
8           **indicating that Mr. Ruzicka was involved in his**  
9           **hearing.**

10                   **So what I -- receiving that complaint,**  
11           **that's where I became aware of that. I'm not sure what**  
12           **these edit log entries are. I've never seen this**  
13           **document.**

14           **Q.     And so you communicated with Senator Schupp**  
15           **that the reason Norman Brown was denied was because of**  
16           **two consecutive ACA sentences that required a minimum**  
17           **of three years to be served per the statute?**

18           **A.     Is there a number on that one?**

19           **Q.     154.**

20                   **I'll mark it as Exhibit 64 for purposes of**  
21           **this deposition.**

22                   **(Deposition Exhibit No. 64 was marked for**  
23           **identification.)**

24                   **THE WITNESS:   Yes.**

25           **BY MS. QUINN:**

1           Q.    As we noted earlier, that's not what's  
2   written on his decision?

3           A.    No.

4                    (Deposition Exhibit No. 47 was marked for  
5   **identification.**)

6   BY MS. QUINN:

7           Q.    Okay. We're going to look at Exhibit  
8   No. 47.

9                    So beyond the problem of Mr. Ruzicka  
10   handling Norman Brown's hearing, there were other  
11   complaints lodged about his treatment by MDOC around  
12   the time of his parole hearing; are you aware of that?

13           A.    I'm not. I don't believe I was aware of  
14   **those issues.**

15           Q.    I'll ask you to take a look at Exhibit 47,  
16   see if this refreshes your recollection about other  
17   concerns following Norman Brown's hearing.

18           A.    I have not seen this. I do not recognize  
19   **any of these documents.**

20           Q.    Are you aware Mr. Brown got removed from  
21   his facility after he complained of Ruzicka doing his  
22   hearing?

23           A.    I'm not aware of that's why he got moved.

24           Q.    Are you aware of his move?

25           A.    I'm aware that he's over at Crossroads

1       **Correctional Center at this time.**

2               Q.     Why did he get moved?

3               A.     **That, I don't know.**

4               Q.     Are you not familiar with his raising  
5 concerns about retaliation and that's why he was moved?

6               A.     **No. I do not know that was the reason he  
7 got moved. That would have been handled through  
8 someone else.**

9               Q.     Did Aaron Jarrett raise anything with you  
10 following Norman Brown's hearing?

11              A.     **As far as?**

12              Q.     Anything.

13              A.     **No. I think I've got the information from  
14 the senator's office calling. And there was  
15 allegations on Mr. Ruzicka being the board member, and  
16 that was the issue that I heard. I know that they  
17 moved Mr. Brown. The reasons that they moved him I  
18 don't get concerned with. That's not my issue. That's  
19 a DAI issue.**

20                       **(Deposition Exhibit No. 48 was marked for  
21 identification.)**

22       BY MS. QUINN:

23              Q.     I'll show you what's been marked as  
24 Exhibit 48.

25                       Have you seen any of these before?

1           **A.    This would be a personnel issue outside my**  
2           **chain of command.**

3           Q.    And you didn't know anything about someone  
4           requesting an -- investigating Mr. Jarrett's activities  
5           relating to Norman Brown?

6           **A.    No, I didn't know anything about this.  Nor**  
7           **should I.  It is a personnel issue.**

8                    **(Deposition Exhibit No. 49 was marked for**  
9           **identification.)**

10          BY MS. QUINN:

11          Q.    I'll show you Exhibit 49.  This is another  
12          request for investigation form.

13                   Have you seen this document before today?

14          **A.    No.**

15          Q.    And you never saw a page two of this set of  
16          materials which references you as having information  
17          about the activities of the parole board potentially  
18          counting words and phrases during hearings?

19          **A.    I had a conversation with my supervisor who**  
20          **inquired about this.  And that was the first time I'd**  
21          **heard of this issue.**

22          Q.    And just to be clear, when we're saying  
23          "this issue," we mean about Don Ruzicka essentially  
24          turning hearings into games; they were scoring the

25          



1       could make inmates say certain goofy phrases?

2               **A.    Yeah.  I'm not sure that I recall -- I'm**  
3       **reading.  I've never seen this document.**

4               Q.    But you said you were contacted by your  
5       supervisor about what you might know?

6               **A.    Yes.**

7               Q.    And that supervisor was Kelly Dills?

8               **A.    Yes.**

9               Q.    And Ms. Dills seems to have been sort of  
10      charged with or took charge of having this  
11      investigation undertaken; is that fair to say?

12              **A.    Yes.**

13              Q.    And the board chair went out of town at the  
14      time the investigation was undertaken; is that right?

15              **A.    I wouldn't know that one way or the other.**

16              Q.    And when you reported to her that you might  
17      have some recollection of words and phrases being  
18      counted, is it fair to say at the time you knew these  
19      games were being played by Ruzicka and your colleagues?

20              **A.    No.  I think I'm misquoted in here.  What I**  
21      **told her was I think there has been issues in the past**  
22      **with other board members maybe doing issues with -- um,**  
23      **not Ruzicka specific, but there's been other times in**  
24      **the past where you may have had somebody who was, you**  
25      **know, discussing, talking about -- I'm trying to**

1       remember.

2                   I didn't get that directly, but was told  
3       that counting paperclips, based upon some, you know, a  
4       delegate that comes in. That was provided to me by my  
5       supervisor in the past.

6                   But as far as having direct knowledge, they  
7       were not discussing games and stuff in front of me.

8                   Q.    So to go back about the paperclip  
9       situation, what was it you were told?

10                  A.    From what I can recollect, there  
11       was -- Ms. Barton had made some statements  
12       about hearing teams taking and putting paperclips on  
13       the desk to rate delegates, or rate interviewers, or,  
14       you know, whatever. It wasn't something -- this was  
15       years and years ago. This is not something I clearly  
16       remember.

17                  But I did not hear -- I can tell you for a  
18       fact, I did not hear Don Ruzicka, or the other unnamed  
19       person who complained, that it was occurring.

20                  Q.    Well, are you familiar with any other  
21       unprofessional conduct on the part of parole board  
22       members, parole analysts, or others involved in these  
23       proceedings?

24                  A.    No.   In these four?

25                  Q.    No.   In any parole proceeding at all.

1           A.    I'd have to think about that.  I mean, none  
2   that -- none that -- that I can speak to.

3           Q.    Why couldn't you speak to them?

4           A.    Well, I'm just trying to think.  You'd have  
5   to give me -- you know, I've been doing this in the  
6   same office --

7           Q.    Let's go with the last five years.

8           A.    Um, I'm trying to think of what was in the  
9   last five years.

10                  No.  Not that I can think of.  Not any  
11   specifics.  And even what I spoke to as far as the  
12   paperclips, that was based on my former supervisor just  
13   saying that, you know, this had been going on.

14                  Now, whether it did or not, I can't verify.  
15   That's what was told to me.

16           Q.    I don't mean to put you on the spot.

17           A.    I know.  I know.  I understand.

18           Q.    But --

19           A.    I don't.

20           Q.    Any situations that you've disagreed with  
21   where the parole board, the analysts, the IPOs or  
22   others are engaging conduct that you think is  
23   inappropriate?

24           A.    Not -- not that's contrary to law.  I have  
25   disagreements all the time with people that, yeah,

1 maybe we should consider this, or not have said this,  
2 but that's a difference in opinion as far as release  
3 decisions.

4 I think there's -- not specific to  
5 hearings -- can we -- can -- do I have -- I think  
6 there's been times when, just antics in the office, as  
7 far as, you know, different -- like my supervisor,  
8 former supervisor -- not Ms. Dills, but Ms. Barton -- I  
9 think there was some disagreements in how the board  
10 should do business. But I don't have specifics.

11 But, you know, that was a difficult time,  
12 because it was very -- the board member -- the chairman  
13 and Ms. Barton were kind of at odds, butting heads.

14 Do I know exactly the specifics of what  
15 everything was? You would have to ask Ms. Barton about  
16 that. But it was a stressful position to be in.

17 (Deposition Exhibit No. 50 was marked for  
18 identification.)

19 BY MS. QUINN:

20 Q. I'm going to show you Exhibit No. 50.  
21 Have you seen this letter before?

22 A. No. I wouldn't have been privy to this.

23 Q. Yeah. I'm wondering "to the whom it may  
24 concern" is in this letter.

25 Do you know?

1           A.    That, I do not know. I can't answer that.  
2   I've never seen this.

3           Q.    Were you aware of Mr. Ruzicka in 2016 being  
4   asked to step away from hearings for a period of time?

5           A.    Yeah.

6           Q.    Can you tell us about that?

7           A.    I was made aware of the allegations when  
8   Ms. Dills asked me about it. And I was -- I think at  
9   that time I was probably doing the hearing schedule. I  
10   know he was removed from the hearing schedule. I don't  
11   remember if I was still doing hearings at that time or  
12   if Ms. Worder had taken over for me.

13                   That's pretty much how I became aware of  
14   it. He could not conduct hearings. He has to stay in  
15   the office, do file work, that kind of thing.

16           Q.    Do you know how long that went on for?

17           A.    That, I'm not completely sure when he got  
18   placed back on the hearing schedule. Or if he ever  
19   did. I don't know if he was doing hearings towards the  
20   end or not. I mean, I don't remember.

21           Q.    He did Norman Brown's hearing, didn't he?

22           A.    I guess he was doing hearings again, yes.

23                   (Deposition Exhibit No. 51 was marked for  
24   identification.)

25   BY MS. QUINN:

1           Q.    I'll show you what's been marked  
2   Exhibit 51.

3           A.    And I also knew -- just to make clear -- I  
4   can get -- I knew that the allegations hit the papers.  
5   I mean, that was -- the initial notification was from  
6   Kelly Dills. When she asked. But there were so many  
7   newspaper articles going out, so I knew about that.

8           Q.    Exhibit 51 talks about a press conference  
9   that my office called relating to Ruzicka's conduct.

10                  Have you seen these materials before?

11          A.    No, I haven't seen this.

12          Q.    Do you remember when that press conference  
13   took place?

14          A.    No, I haven't seen this.

15          Q.    There wasn't activity in the office, kind  
16   of a flurry of activity around this effort on our part,  
17   to surface Don Ruzicka's behaviors?

18          A.    I was aware that there was the media  
19   articles being sent out. Every employee was aware of  
20   that. I don't think I was aware that you guys did a  
21   press conference. It may have been included in one of  
22   the articles.

23                  But as far as the date and everything, my  
24   indication came from Ms. Dills. The initial articles.

25          Q.    So between when the initial investigation

1       took place, and then the press started covering it  
2       months later, was there any training done at the  
3       Department of Corrections or the parole board relating  
4       to Ruzicka-like activities?

5               **A.    No.   Not that I'm aware of.   I don't know**  
6       **what was said to the board outside of the board that I**  
7       **was not involved in.**

8               I don't know whether the chairman brought  
9       everybody in and did any training or what he said to  
10      the board members.

11              Q.    There was no training given to the analysts  
12      about this problem, right?

13              **A.    No.   Not that I'm aware.**

14              Q.    Well, you were an analyst.

15              **A.    I was not trained in this process.   Other**  
16      **than everybody was embarrassed by the whole issue.**

17              Q.    And you, as an analyst, were you ever at  
18      hearings with Don Ruzicka?

19              **A.    I've conducted hearings with Don Ruzicka.**

20              Q.    And did you ever see him addressing  
21      offenders in funny ways?

22              **A.    Absolutely not.**

23              Q.    Making jokes?

24              **A.    Nope.**

25              Q.    Okay.

1           A.    Not that I'm aware of.  There was  
2   never -- no coordination of throwing names out there.  
3   I wouldn't have allowed it.

4                   (Deposition Exhibit No. 52 was marked for  
5   identification.)

6   BY MS. QUINN:

7           Q.    I'll show you what's been marked as  
8   Exhibit 52.

9                   These are documents relating to Ruzicka  
10   declaring that he is resigning from the board and  
11   Kenny Jones accepting that resignation.  And a press  
12   release from the Governor -- no, from the corrections  
13   department about the resignation.

14                  Have you seen these before?

15           A.    I'm sure I have.  I'm sure it probably  
16   passed through my desk.  I don't really remember it.

17           Q.    Did Ruzicka resign?

18           A.    Yeah.  He signed his resignation.

19           Q.    I see that document.

20                  Did you hear any other assessment of how he  
21   came to leave?

22           A.    I don't know whether he was -- if he did  
23   not resign, whether he would have been terminated.  I  
24   would -- whether he was pressured.  I mean, something  
25   like this happens, I would assume there's pressure that



1 occurs that you need to resign. I was not sitting in  
2 the room when they said you either resign or we're  
3 gonna fire you. I wouldn't be part of that.

4 Q. Did Kelly Dills tell you that is what took  
5 place? Or anyone else?

6 A. No. Chairman Jones did tell me -- he did  
7 tell me that Mr. Ruzicka was going to resign. And  
8 Kenny Jones felt that was a good thing.

9 Q. What else did Kenny Jones say to you about  
10 Ruzicka's behavior?

11 A. He didn't say. I think -- I don't remember  
12 direct conversations with Mr. Jones. I think he  
13 thought that was improper. I mean, I think you have to  
14 know that, especially if Mr. Jones was the one that  
15 self-policed the board and brought that to light.

16 Q. Have there been complaints made to the  
17 parole board that you're aware of relating to  
18 Ruzicka's impacting hearings, people looking for new  
19 hearings?

20 A. Yes, there have been.

21 Q. What's going on about that situation?

22 A. When there's been allegations that improper  
23 behavior occurred at a hearing, I know that has  
24 occurred because we had Senator Schupp's office call in  
25 regards to Norman Brown and Mr. Ruzicka being a part of

1       that.

2                   What we've done is, in Norman Brown's case,  
3       you know, I've spoke with the analyst. He's one of our  
4       best analysts, Mr. Baker. I reviewed the hearing tape  
5       in its entirety to make sure there was no games being  
6       played in that.

7                   And there was a good hearing.  
8       Mr. Ruzicka was nothing but professional in that  
9       hearing. From everything I heard, he did a good  
10      hearing with Mr. Brown, and Mr. Brown had a good  
11      hearing and good responses back.

12                  Q.   And what about the other people who have  
13      complained, have they all gotten reviews of their  
14      proceedings?

15                  A.   If there was a complaint that Mr. Ruzicka  
16      did any game-playing in the hearings, we basically had  
17      the same procedure. We would review those and see if  
18      there was any substance to the allegations.

19                  The ones that I've received have not  
20      had -- that I've listened to, there's been no  
21      game-playing. Those specific hearings I believe were  
22      identified through the investigation, and a lot of  
23      those were already released on parole.

24                  Q.   How many hearings have you personally  
25      reviewed where a complaint was made?

1                   MR. CRANE: Do you mean on this issue or  
2 any other issue?

3 BY MS. QUINN:

4                   Q. I'm sorry. On this issue, on these  
5 specific Ruzicka hearings, did anyone say, "I want a  
6 new hearing?"

7                   A. I believe there was probably two to three,  
8 Mr. Brown being one of them.

9                   (Deposition Exhibit No. 53 was marked for  
10 identification.)

11 BY MS. QUINN:

12                   Q. I'm showing you Exhibit 53.

13                   You mentioned earlier press coverage of  
14 Ruzicka and this game-playing and resignation.

15                   And you sent this coverage from CNN to  
16 Kenny Jones?

17                   A. Yes.

18                   Q. Is that right?

19                   A. Yes.

20                   Q. Why did you do that?

21                   A. Generally, if there's any press coverage  
22 that comes in on a Google alert from my computer, I  
23 will forward it just so that the board member is aware  
24 of it.

25                   I would assume this was probably after he

1       was the chairman. And it's more of an issue that I  
2       want to make sure that he's aware of any press  
3       coverage, positive or negative.

4               Q.     Don't you have a press person that does  
5       that?

6               A.     Yeah, we do. It's kind of -- I think that  
7       I do that just as -- make sure that he sees it. I'm  
8       sure we have a -- we have a PIO, whatever that stands  
9       for.

10              MR. CRANE: Public information officer.

11              THE WITNESS: If I receive something in a  
12       Google alert, then I will forward it over to him to  
13       make sure that he's aware of that situation.

14              (Deposition Exhibit No. 54 was marked for  
15       identification.)

16       BY MS. QUINN:

17               [REDACTED]  
18               [REDACTED]  
19       [REDACTED]       [REDACTED]  
20       [REDACTED]  
21               [REDACTED]  
22               [REDACTED]       [REDACTED]  
23       [REDACTED]       [REDACTED]  
24       [REDACTED]  
25               [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] [REDACTED] [REDACTED]  
9 [REDACTED] [REDACTED]  
10 [REDACTED] [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED] [REDACTED]  
17 [REDACTED]  
18 [REDACTED] [REDACTED] [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED]  
25 [REDACTED] [REDACTED]

1 [REDACTED]  
 2 [REDACTED] [REDACTED]  
 3 [REDACTED] [REDACTED]  
 4 [REDACTED] [REDACTED]  
 5 [REDACTED] [REDACTED]  
 6 [REDACTED] [REDACTED]  
 7 [REDACTED] [REDACTED]  
 8 [REDACTED] [REDACTED]  
 9 [REDACTED] [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]

12 (Deposition Exhibit No. 55 was marked for  
 13 identification.)

14 BY MS. QUINN:

15 Q. I'll show you what I'm going to mark as  
 16 Exhibit 55 for purposes of this deposition.

17 This is a packet of material relating to  
 18 the Campaign for Fair Sentencing of Youth inviting  
 19 parole officials from Missouri to attend a conference  
 20 and special programming for parole board members.

21 Have you seen this before?

22 A. I don't remember seeing this. I don't have  
 23 any knowledge of this. But not that I'm aware of.

24 Q. Had anyone mentioned to you the opportunity  
 25 to go to a Campaign for Fair Sentencing of Youth

1 training?

2 A. No. I don't remember anybody mentioning  
3 this.

4 Q. If we called them on the phone right now  
5 and invited you, would you go?

6 A. It would have to be approved.

7 I do know there's very limited funds for  
8 outside training.

9 But if it was a -- if it was a conference  
10 that was on fair sentencing, I would say I'd have to  
11 get my supervisor to approve. And if there was no cost  
12 to the department, I don't know why he would not.

13 If that makes sense.

14 Q. The only impediment, it sounds like, you  
15 believe --

16 A. Cost.

17 Q. -- is them paying for the travel?

18 A. Yeah. Out-of-state travel is very costly.  
19 And it is -- I have not seen many approvals for  
20 out-of-state travel.

21 (Deposition Exhibit No. 58 was marked for  
22 identification.) (Changed to 56)

23 BY MS. QUINN:

24 Q. Here's Exhibit 58.

25 This is a July 2017 notification relating

1 to training made available to IPOs.

2 Are you familiar with this training?

3 A. I would have to look at it first.

4 IPO specific training, it's my  
5 understanding, it's training designated to IPOs.

6 As far as further information related to  
7 that, I'm not exactly sure what it all -- I know that  
8 there's specific IPO training.

9 Q. You had no part of setting this up or  
10 planning it?

11 A. No. I'm not sure who it's addressed to.

12 Q. Okay.

13 A. We have new IPO training. I don't know if  
14 that's what this is.

15 Q. Okay.

16 A. From what I can tell, I believe that's  
17 probably new IPO training.

18 Q. But fair to say, nothing relating to  
19 adolescent development or youth sentencing?

20 A. There's no specific topics to that.  
21 Whether they touch on that issue in some of these  
22 sessions, that, I would not know.

23 Q. And I think I mis-numbered that. I think  
24 that's 56 if you can correct it.

25 A. Okay.



1                   **(Deposition Exhibit No. 57 was marked for**  
2                   **identification.)**

3           BY MS. QUINN:

4                   Q.    I'll show you Exhibit 57.

5                            Maybe you can tell me what this is.

6                   A.    **I believe this was a data run by our**  
7                   **planning and research as to the number of juvenile life**  
8                   **without sentences.**

9                   Q.    And it looks like maybe there's a page  
10                   missing from this, 54; do you know anything about that?

11                   A.    **Some of this is -- seems to be some of the**  
12                   **same information, I believe.**

13                           MR. CRANE: Looks like copying from Excel.

14                           THE WITNESS: Looks like the same.

15           BY MS. QUINN:

16                   Q.    But the date on this one that you're  
17                   looking at, May 2017, if you look at the second --  
18                   there's two sets -- one is dated August of 2016. One  
19                   is dated July of 2017.

20                           Sounds like there are different versions  
21                   yet floating around of this spreadsheet 'cause that one  
22                   you just talked about is May.

23                   A.    **Yes. Looks like these are run at different**  
24                   **times.**

25                   Q.    So Exhibit 57, the last document, is dated

1 July of 2017.

2 Are you aware of any more recent runs than  
3 this?

4 A. No. Not that I'm aware of.

5 Q. So who's putting these spreadsheets  
6 together; if you know?

7 A. This would come from our research --  
8 planning and research.

9 Q. Is that that fellow Mr. Gin?

10 A. Who?

11 Q. Gin?

12 A. I have no idea who you're talking about.

13 Q. Never mind.

14 A. Probably David Ottfield and his group. I  
15 would imagine. This is not something that we would  
16 hand calculate.

17 Q. And then separately there are spreadsheets  
18 related to JL WOP hearings that are taking place?

19 A. Yes.

20 Q. And your office is handling those  
21 spreadsheets?

22 A. Yes. We're handling those spreadsheets and  
23 tracking those hearings that had juvenile life  
24 withouts.

25 (Deposition Exhibit No. 58 was marked for

1       **identification.)**

2       BY MS. QUINN:

3               Q.     Here we have Exhibit No. 58.

4                       These are items produced in the document  
5       production that took place before today.

6                       One is an undated spreadsheet.   One is  
7       dated October 23, 2017.

8               **A.     Okay.**

9               Q.     Is there any more recent spreadsheet that  
10      you produced?

11              **A.     Yes.   We provided it to you guys today.**

12              Q.     Okay.   And are you personally maintaining  
13      and updating this spreadsheet for the hearings?

14              **A.     This spreadsheet is -- Dawn Umfleet is**  
15      **putting these together and updating them as decisions**  
16      **come back, yes, but not me personally.**

17              Q.     Okay.   This is Amy's area.

18                       Now we're going to talk about -- very  
19      quickly -- Exhibit 61.

20                       (Deposition Exhibit No. 61 was marked for  
21      identification.)

22      BY MS. QUINN:

23              Q.     Here is a set of calendars provided to us  
24      that appear to set forth the schedules for the parole  
25      board members from November 2016 to March of 2017.

1 Am I right in my assessment of what this  
2 is?

3 A. Yes.

4 Q. How does this schedule get put together?

5 A. The schedule is put together by the hearing  
6 analyst. They determine what days are available to  
7 have hearings.

8 We try to -- we run -- I can tell you what  
9 I did when I did the hearing schedule.

10 Q. No, I'd like to know what's going on from  
11 November of 2016 to March of 2017 first.

12 A. What happens is that they will generally  
13 get an idea of how many hearings are going to be held  
14 for the Monday in each institution. So this hearing  
15 calendar in November was probably done three months in  
16 advance. That's why we don't -- so that's why they  
17 have this ahead of time.

18 And then we try to determine how many  
19 hearings will occur at that institution for that month.  
20 And then we determine how many are scheduled to occur,  
21 and then we figure out how many days that we likely  
22 need, and we draw up an initial hearing calendar.

23 As you can see, there are a lot of changes  
24 that occur to the hearing calendar. A lot of that is  
25 based on waiver -- hearing waivers, where offenders

1 waive personal appearance and get decisions from the  
2 board without a personal appearance.

3 There are others that, you know, you may  
4 collapse days so that you don't go up to an institution  
5 for three hearings on one day and the next week go for  
6 another three hearings.

7 So it's developed to determine -- it's  
8 developed to schedule out what institutions need  
9 hearings and what days to put them on.

10 Q. Is there a maximum number of hearings that  
11 will be scheduled for any given day?

12 A. There are maximums. At this point, I  
13 believe it's still 18. I believe. That's something  
14 the hearing scheduler would know for sure.

15 Q. And is that based on hearings taking  
16 30 minutes or less?

17 A. It's based on -- I don't know how  
18 many -- what that's based on. It's what they believe  
19 they can accomplish in an eight-hour workday. So you  
20 probably have to average that out.

21 Some hearings take longer than others.  
22 Victim cases. Juvenile life without cases. They take  
23 a longer period of time than a non-support, first-time  
24 offender.

25 Q. But the plan is to be at the facility no

1 more than eight hours?

2 A. That's the hope. Do they always reach that  
3 goal? I couldn't say. They're usually able to get  
4 hearings done within the workday.

5 Q. And there's nothing that instructs the  
6 board members to take longer with juvenile life without  
7 parole hearings than regular hearings, right?

8 A. There's nothing on the calendar that  
9 instructs that. I think the board members understand  
10 the complexity of some of these cases, just like they  
11 do with victim cases, and they are going to take  
12 longer.

13 Q. But there's no written policy that requires  
14 them to do that, correct?

15 A. No.

16 MS. QUINN: Let's take a break.

17 (A break was taken.)

18 MS. QUINN: I'm finished.

19 CROSS-EXAMINATION BY MR. SPILLANE:

20 Q. I'm Mike Spillane from the Attorney  
21 General's Office. I represent the Defendants in this  
22 is case. I have a couple of quick questions.

23 I handed you something, the juvenile life  
24 without parole worksheet, designated for this purpose  
25 as Respondent's Exhibit 1.

1                   Who designed this?

2                   A.    This would have been designed by the  
3                   IPO region.

4                   As far as a specific name, I cannot tell  
5                   you. I can tell you that it would have -- I can give  
6                   you who I believe designed it.

7                   Q.    That's fine.

8                   A.    I believe this would have been designed by  
9                   Michelle Cassidy, the IPO regional administrator, or  
10                  her staff.

11                  Q.    What purpose was it designed for; if you  
12                  know?

13                  A.    This purpose was designed so that when  
14                  institutional parole officers were interviewing  
15                  juvenile life withouts for parole consideration, that  
16                  they did not just ask questions that they would with  
17                  every other parole consideration hearing, but they  
18                  would touch on issues that are required by statute due  
19                  to Senate Bill 590.

20                  Q.    All right. Last question on this one.

21                        The first line says, "those considerations  
22                  are highlighted and should be included in the report."

23                  A.    Yes.

24                  Q.    What does that mean?

25                  A.    That means that these items that are

1       **highlighted are required to be placed into the reports.**  
2       **Should be included in the report.**

3               Q.     When it says "the report," is that the  
4       institutional parole officer's report?

5               A.     That would be the parole -- the prehearing  
6       report that is conducted that is written by the  
7       institutional parole officer.

8               Q.     Did I understand you correctly when you  
9       testified on direct that that goes into the file that  
10      is seen by the parole board?

11              A.     No.   This goes -- goes in a working file by  
12      the institutional paroles officer's use in order to  
13      develop the prehearing report.

14              Q.     That was a very bad question.

15                     What I was trying to ask, did I understand  
16      you correctly to testify that the report by the  
17      institutional parole officer that incorporates this  
18      information goes into the file that is reviewed by the  
19      board?

20              A.     Yes.   This information is placed into the  
21      prehearing report that is part of the file material  
22      that the board uses for parole consideration hearings.

23              Q.     Let's move on to Respondent's  
24      Depo Exhibit 2.   Which is a sheet that says -- well,  
25      why don't you read the first line for us in the report.



1           **A.    "In a parole review hearing, under this**  
2           **section, the board shall consider, in addition to the**  
3           **factors listed in 565.033:"**

4           Q.    And there's a list of five things with  
5           lines for information next to them?

6           **A.    Yes.**

7           Q.    Who does this go to?  This document?

8           **A.    This document is taken to the parole**  
9           **consideration hearing, and is filled out by --**  
10          **generally going to be the analyst filling this**  
11          **information out.**

12          Q.    And is this document in the file when it  
13          is -- goes to the parole board for decision?

14          **A.    Yes.**

15          Q.    And when it says "board shall consider,"  
16          is that a directive that the board must consider the  
17          information here?

18          **A.    Yeah.  I believe "shall" is a directive**  
19          **term.**

20          Q.    And where it says "in addition to the  
21          factors listed in 565.033," what is 565.033?

22          **A.    That's a statute in -- that lists factors**  
23          **that are required to be viewed at trial for juvenile**  
24          **offenders, which would include circumstances of the**  
25          **offense being one of those factors.**

1           Q.    So when I read that sentence that you just  
2   told me was a directive, it said, "the board shall  
3   consider in addition to the factors listed in 565.033,"  
4   does that directive go both to the factors in 565.033,  
5   and these five additional factors?

6                   MS. QUINN:  I'm going to object to the form  
7   of that question.

8   BY MR. SPILLANE:

9           Q.    You may answer if you understand it.  If  
10   not, I'll ask a better one.

11           A.    I believe that this statute requires the  
12   board to -- that they shall consider these additional  
13   factors in addition to those in 565.033.

14                   I believe that is not a "shall consider  
15   these additional factors," and possibly may consider  
16   the others.  I believe that is a "shall consider" both.

17           Q.    I'm going to move forward to Respondent's  
18   Exhibit 3, which you produced this morning.  And I  
19   think I gave you a copy.

20                   Tell us what this is.

21           A.    This is -- yesterday, I took the juvenile  
22   life without spreadsheet for the decisions, I took that  
23   updated decision to try to see what the -- to get a  
24   feel as to what the board's decision-making practices  
25   were on juvenile live withouts.

1           I anticipated that that would probably be a  
2       question: How does the board feel about juvenile life  
3       without. So what I wanted to have is data, actual hard  
4       data, as to the board's decision-making process.

5           Q. I'm going to ask you some specific  
6       questions.

7           There's a line labeled total number of  
8       JL WOP offenders who petitioned. And the number next  
9       to it is 31.

10          What is that?

11          A. That is how many petitions we received on  
12       juvenile live withouts.

13          Q. The next line says "minus four ineligible  
14       due to time served."

15          A. Can I clarify that?

16          Q. Sure.

17          A. This is the total number of juvenile life  
18       without offenders who petitioned. It's not the total  
19       number of petitions that were received. Because  
20       there's been, I think, three offenders that  
21       re-petitioned.

22                So I didn't want -- I wanted to know of the  
23       hearings that we conducted, what was the board's  
24       decision-making process.

25                So those -- it's a -- I know it's a slight

1 deviance from what you said. But there's 31 offenders  
2 who have petitioned. There's three that petitioned  
3 twice. But there's 31 different offenders that we  
4 received petitions.

5 Q. And do I read the next line to mean that  
6 four of them didn't get hearings because you looked at  
7 them and they weren't JL WOPs; is that an accurate  
8 reading?

9 A. Yes. There was one that was a life without  
10 for 50 years.

11 There's one offender who actually withdrew  
12 his petition.

13 And there's also two that did not have  
14 sufficient time in on the 25 years to be eligible to  
15 petition by statute.

16 Q. And so you held 27 hearings?

17 A. We held 27 hearings.

18 Q. And one of those, -- as I read the next  
19 line -- was a mistake, because the fellow actually was  
20 over 18 when he committed the crime?

21 A. Yeah. That was one that, it was determined  
22 at the time of the hearing, that the offender was not a  
23 juvenile at the time that the offense occurred.

24 Q. Okay. And then the next line you take --  
25 you end up with 26, and then you take three out because

1 three were ineligible for release within five years?

2 A. There was three offenders who had  
3 consecutive sentences with statutory requirements of  
4 time to be served. Armed criminal action, I believe,  
5 was in all of them was the issue, which carries a  
6 three-year time-to-serve on that specific sentence.

7 The way the juvenile life without is  
8 written, you have to serve 25 years on the juvenile  
9 life without sentence, and it's not specific to the  
10 entire sentence structure.

11 Q. So as I read this, you have the number of  
12 eligible who asked for release, and were eligible for  
13 release within five years, were 23?

14 A. Yes. And where that number came from, it  
15 is the board's practice not to set a reconsideration  
16 hearing out more than five years.

17 Q. Okay. And then it says one hasn't been  
18 decided; is that still accurate?

19 A. One is currently pending a final board  
20 decision.

21 Q. So as I read the last number, which is  
22 bolded, it says you did 22 hearings for people who were  
23 eligible for release; is that accurate?

24 A. Yes. That's what I came up with my data  
25 set.

1           Q.    And how many received release dates of  
2   those 22?

3           A.    **Four.**

4           Q.    And you calculated that as 18.2 percent?

5           A.    **That's -- yes.**

6           Q.    And these were all the first parole hearing  
7   they'd ever had?

8           A.    **These are -- yes. We have not conducted**  
9   **any reconsideration hearings on any of the juvenile**  
10 **life withouts.**

11                   **So these are -- these are four offenders,**  
12 **or 18 percent of the offenders, on their first official**  
13 **parole consideration on a juvenile life without, we set**  
14 **a release date.**

15           Q.    I'm going to ask you a question based upon  
16 your experience. And if you don't know the answer,  
17 then tell me.

18                   Is there generally a higher percentage of  
19 people who are paroled at the second hearing than at  
20 the first?

21                   That's probably a horrible question because  
22 it doesn't take into account there are very minor  
23 offenses.

24                   So maybe you can -- for serious offenses,  
25 is it generally so that there's a higher percentage of

1 release on the second and subsequent hearings than at  
2 the first?

3 A. That's a hard -- that's a hard question to  
4 answer. Because most general -- most -- there's  
5 nothing really to compare these general life withouts  
6 to. These are murder-first case. Juvenile life  
7 without.

8 We have murder-second cases. And that's  
9 the closest thing you can come to, would be a  
10 murder-second case life sentence. And right now,  
11 anybody with a life sentence would be 85 percent of 30.

12 I can't give you statistics on how many  
13 first-time offenders for murder are released on their  
14 first hearing.

15 I can give you what I speculate.

16 Q. I don't want you to speculate.

17 And I'm thinking you may not have actually  
18 even done anybody that had a 30 with an 85 percent on  
19 it, because that just came in in 1994, so those guys  
20 probably haven't run their 25.

21 A. No. There's nothing to compare to. And  
22 there's nothing to compare the crimes. Because the  
23 elements of a murder-first are significantly different  
24 with the premeditation on a murder-second. So I think  
25 you're comparing oranges to apples. And there's other

1 oranges and apples with, are you an adult or are you a  
2 juvenile?

3 This is all stuff -- we're trying to sift  
4 through this and make good release decisions based on  
5 what these factors are to consider and the growth of  
6 the offender.

7 Q. Let me ask you another question: If a  
8 youth -- one of these JL WOP offenders, or any offender  
9 wants to get something to the parole board about their  
10 maturation or rehabilitation, how do they do that?

11 A. It's either through the prehearing  
12 interview, or if they want to present documentation,  
13 they can present it. If family members want to present  
14 information, or attorneys, we'll make that part of the  
15 file.

16 Q. So if they sent you something in advance,  
17 does that all go into the file that the board sees?

18 A. It should go into the parole consideration  
19 file. The parole hard copy file. And it will also go  
20 into our file.

21 MR. SPILLANE: Do you have any questions  
22 that I missed, Mr. Crane?

23 MR. CRANE: I have one question.

24 MS. QUINN: I want to object to Mr. Crane  
25 asking questions. If Amy wants to jump in here.



1 MR. SPILLANE: That's fine.

2 CROSS-EXAMINATION BY MR. CRANE:

3 Q. Ms. Quinn brought up a scenario earlier  
4 where three boards members vote to release an offender,  
5 but have different dates that they voted to release,  
6 and two members vote to reconsider the offender instead  
7 of releasing him.

8 In that the situation, can the board  
9 members confer to see if they can agree on a release  
10 date?

11 A. Yes. Until you get a majority board  
12 decision, and in some cases because it's a split vote,  
13 the board members will have to go back and confer and  
14 try to come up with a resolution to the spit vote.

15 Q. So until there are three votes to re-hear,  
16 the -- so a majority vote either way --

17 A. Yes.

18 Q. -- a split vote, the decision stays  
19 unresolved until the board can resolve it?

20 A. Yes.

21 MR. CRANE: Thank you.

22 MR. SPILLANE: I'm glad you asked that. I  
23 didn't understand that either.

24 MS. QUINN: So I'll ask two follow-up  
25 questions.

1 REDIRECT EXAMINATION BY MS. QUINN:

2 Q. So what you said then earlier, Mr. Mueller,  
3 is incorrect. If three do not agree on a release date,  
4 then that will become a denial at some point if there's  
5 no agreement on a date?

6 A. I'm not sure I understand what you just  
7 asked. You have to have -- depending on the number of  
8 board members, depends on what your majority board  
9 decision is.

10 So if there's five board members, majority  
11 is three. If there's seven -- or if it's six, there's  
12 four. If it's seven, it's still four.

13 So when decisions are being made to make a  
14 majority board decision, all -- there has to be a  
15 majority board -- the vote, depending on the numbers --  
16 the majority board has to agree on a release date or  
17 have to agree on a re-hear date with a specific date up  
18 to five years out.

19 Q. If they don't agree on a release date, it's  
20 treated as a denial, and they have to come up with a  
21 joint rehearing date?

22 A. No. If they don't agree on a release date,  
23 and it's a split decision, it's going to take longer.  
24 It's going to be held until there can be a majority  
25 board agree one way or the other.

1           So those board members may take this file  
2           and go to another person and go, "You wanted to release  
3           him a year later, this guy had a good hearing, would  
4           you consider releasing on this date that we gave?"

5           Or, you may see them do it in a closed  
6           meeting and go, "Okay, we can't come to an agreement on  
7           this. Let's hash this out." Because that -- there's  
8           no automatic denial of release. There's no automatic  
9           grant of release. It has to be a majority board  
10          decision.

11          And if I misspoke, I didn't mean that every  
12          split vote they can't decide whether there's going to  
13          be a denial or a re-hear. What it's gonna be, it's not  
14          going to be final until there is a majority board  
15          decision.

16          Q.   And let me ask about JL WOP hearings that  
17          are taking place; when did the last one take place.

18          A.   I'd have to look at my spreadsheet.

19                  The last one was a withdrawal.

20                  The last hearing for a juvenile life  
21          without, the last hearing occurred in October of 2017.  
22          This doesn't have the specific date that it occurred,  
23          but the month of October of 2017.

24          Q.   Have there been any decisions to --

25          A.   Actually -- that is correct. Sorry.

1 Q. It was actually held in October?

2 A. It was held in October.

3 Q. And that's the one we're still waiting for  
4 a decision?

5 A. Yes.

6 Q. Has there been any decision to slow down  
7 the setting of these hearings?

8 A. I don't understand what you're asking.

9 Q. Since you've taken over this position, have  
10 you set any hearings for JL WOP individuals?

11 A. Generally, hearings are going to take place  
12 in approximately 90 days.

13 Now, there may be times when 90 days --  
14 there is a breakdown. If it's after 21st of the month,  
15 then that goes to the following month,  
16 90 days after that.

17 But other than that, no, we haven't done  
18 anything different in slowing these cases down. We  
19 haven't done anything different spreading time out to  
20 not hear them in more than that 90-day window.

21 MR. SPILLANE: Okay. That's it.

22 Thank you so much.

23 MS. QUINN: Thank you all.

24

25

## 1 CERTIFICATE OF REPORTER

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I, Kim D. Murphy, Certified Court Reporter,  
for the State of Missouri, do hereby certify that the  
witness whose testimony appears in the foregoing  
deposition was duly sworn by me; that the testimony of  
said witness was taken by me to the best of my ability  
and thereafter reduced to typewriting under my  
direction; that I am neither counsel for, related to,  
nor employed by any of the parties to the action in  
which this deposition was taken, and further that I am  
not a relative or employee of any attorney or counsel  
employed by the parties thereto, nor financially or  
otherwise interested in the outcome of the action.

---

Kim D. Murphy, CCR